

1 STATE OF ALABAMA  
2 ALABAMA SECURITIES COMMISSION  
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4 In the matter of  
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6 THOMAS WEISEL PARTNERS, LLC  
7 Respondent.

8  
9 ADMINISTRATIVE ORDER  
10 No. CO-2005-0008

11  
12 WHEREAS, Thomas Weisel Partners, LLC ("TWP") is a broker-dealer registered in  
13 the State of Alabama; and

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15 WHEREAS, coordinated investigations (the "Investigations") into TWP's activities in  
16 connection with certain conflicts of interest that research analysts were subject to during the  
17 period of approximately July 1999 through 2001 have been conducted by a multi-state task  
18 force and a joint task force of the U.S. Securities and Exchange Commission ("SEC"), the  
19 New York Stock Exchange ("Exchange"), and the National Association of Securities Dealers  
20 ("NASD") (collectively, the "regulators"); and

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22 WHEREAS, TWP has cooperated with regulators conducting the investigation by  
23 responding to inquiries, providing documentary evidence and other materials, and providing  
24 regulators with access to facts relating to the investigations; and

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26 WHEREAS, TWP has advised regulators of its agreement to resolve the issues  
27 raised in the investigations relating to its research practices; and

28 WHEREAS, TWP agrees to implement certain changes with respect to its research  
practices to achieve compliance with all regulations and any undertakings set forth or  
incorporated herein governing research analysts, and to make certain payments; and

WHEREAS, TWP, through its execution of this Consent Order, elects to permanently waive any right to a hearing and appeal under Title 8, Chapter 6, Code of Alabama 1975 with respect to this Administrative Consent Order (the "Order");

NOW, THEREFORE, the Alabama Securities Commission, as administrator of the Alabama Securities Act, hereby enters this Order:

## **I. JURISDICTION/CONSENT**

TWP 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 the entry of this Order by the Alabama Securities Commission.

## II. FINDINGS OF FACT

## A. Background and Jurisdiction

1. Thomas Weisel Partners, LLC is a Delaware limited liability company with its headquarters and principal executive offices in San Francisco, California. TWP was formed as Portsmouth Capital LLC in September 1998, and changed its name to Thomas Weisel Partners LLC in February 1999.
2. TWP is registered with the Securities and Exchange Commission ("Commission"), is a member of the New York Stock Exchange, Inc. ("Exchange") and the NASD Inc. ("NASD") and is licensed to conduct securities business on a nationwide basis.
3. TWP describes itself as a "merchant bank providing investment banking, institutional brokerage, private client services, private equity and asset management exclusively

1 focused on the growth sectors of the economy." TWP provides a comprehensive  
2 range of advisory, financial, securities research, and investment services to corporate  
3 and private clients. TWP also provides investment banking services to corporate  
4 clients.

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6 4. TWP is currently registered with the Alabama Securities Commission as a broker-  
7 dealer, and has been so registered since January 24, 1999.

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9 5. This action concerns the time period of July 1999 through 2001 (the "relevant  
10 period"). During that time, TWP engaged in both research and investment banking  
11 ("IB") activities.

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13 **B. Overview**

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15 6. During the relevant period, TWP employed research analysts who provided research  
16 coverage of the issuers of publicly traded securities. TWP's equity research analysts  
17 collected financial and other information about a company and its industry, analyzed  
18 that information, and developed recommendations and ratings regarding a  
19 company's securities. TWP distributed its research product directly to its own client  
20 base. TWP's research was also distributed through subscription services such as  
21 Thomson Financial/First Call, Multex.com, Inc., and Zacks Investment Research  
22 (collectively referred to as "Public Services").

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24 7. From February 1999 to June 1999, TWP maintained a 4-tiered ratings system:  
25 Strong Buy, Buy, Watch List, and Sell. In June of 1999, TWP renamed the Sell rating  
26 to Underperform. In August 1999, TWP renamed the Watch List rating to Market

1 Perform so that its 4-tiered ratings system was: Strong Buy, Buy, Market Perform,  
2 and Underperform. That rating system remained intact until November 2001.  
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5 8. TWP ratings were heavily skewed towards "Buy" and "Strong Buy." For example, as  
6 of April 13, 2000, TWP covered approximately 230 stocks with 89% being rated  
7 either "Buy" or "Strong Buy" (42% were rated "Strong Buy" and 47% were rated  
8 "Buy"). In contrast, there was only 1 stock rated "Underperform." As of January 18,  
9 2001, TWP covered approximately 268 stocks, with 80% being rated either "Buy" or  
10 "Strong Buy" (31% were rated "Strong Buy" and 49% were rated "Buy"), but none  
11 rated "Underperform."

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14 9. As set forth below, written presentations prepared in connection with pitches for initial  
15 public offerings ("IPOs") often touted TWP's favorable coverage of other issuers and  
16 included research coverage as one of a number of services that TWP would provide  
17 in "aftermarket" support of an issuer's stock.

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20 10. Research analysts participated in the pitch process for IPOs, secondary offerings and  
21 merger and acquisition work that TWP sought to perform on behalf of publicly-traded  
22 clients and potential clients. The analysts involved in the pitch process sometimes  
23 included the same analysts who were providing or had provided research coverage  
24 of the client or potential clients from whom TWP was seeking investment banking  
25 business. In written presentations prepared in connection with these pitches, TWP  
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1 touted the past research "support" it had provided to its client or potential client, and  
2 included charts that tracked its coverage and ratings, and the issuer's stock price.  
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5 11. TWP analysts considered prospective investment banking business in determining  
6 whether to initiate or to continue to provide research coverage for issuers. TWP's  
7 investment bankers participated in the evaluation of TWP research analysts, and a  
8 portion of the TWP analysts' compensation was tied to the analysts' success in  
9 helping TWP generate investment-banking business. TWP failed to disclose any of  
10 these facts to its brokerage clients or to the general public.  
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13 12. TWP received at least one payment from another broker-dealer as consideration for  
14 TWP's research coverage of a security. TWP failed to disclose the payment or the  
15 amount thereof to its brokerage clients or to the general public.  
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18 13. On occasion, TWP paid other broker-dealers to initiate or to maintain research  
19 coverage with respect to issuers for which TWP acted as an underwriter. The broker-  
20 dealers that TWP paid to initiate or to maintain research coverage did not disclose  
21 that they had received consideration for their research coverage of the securities.  
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1           **C. TWP'S RESEARCH STRUCTURE CREATED CONFLICTS OF INTEREST FOR**  
2           **RESEARCH ANALYSTS**

4           **Research Analyst Compensation Tied to Investment Banking Revenue**

6           14. TWP tracked investment banking revenue attributable to research analysts. TWP  
7           also tracked to research analysts the brokerage revenue generated from stocks that  
8           the analysts covered. During the relevant period, the amount of fees TWP generated  
9           from investment banking deals attributed to an analyst accounted for at least five  
10           percent of that analyst's overall compensation. Additionally, TWP used the  
11           brokerage commission revenue generated in the stocks covered by TWP analysts as  
12           a factor in determining analysts' total compensation.

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16           15. During the relevant period, TWP compensated its research analysts both directly and  
17           indirectly on the amount of investment banking revenue they helped to generate.  
18           Research analysts thus faced a conflict of interest between the incentive to help win  
19           investment banking deals for TWP while being under an obligation to conduct and  
20           publish objective research regarding those companies.

22           **TWP's Investment Bankers Evaluated TWP's Research Analysts and Helped**  
23           **Determine the Compensation They Received**

25           16. During the relevant period, TWP organized research analysts and investment  
26           bankers into "Tiger Teams" along industry groups such as telecommunications and

1 software. Tiger Teams coordinated the efforts of research and investment banking to  
2 identify new business opportunities.  
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5 17. TWP investment bankers who worked with a TWP research analyst on investment  
6 banking deals evaluated the research analyst's performance as part of an annual  
7 performance evaluation. That evaluation was considered in setting the analyst's  
8 compensation. This input from investment bankers further indicated to research  
9 analysts the importance of satisfying the needs of investment bankers and their  
10 clients and significantly hampered the independence of research reports that the  
11 analysts issued.  
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14 **TWP Research Analysts Played Important Roles in "Pitches" To Win**  
15 **Investment Banking Business, Promised Research Coverage for IPO**  
16 **Clients, and Provided Coverage Immediately Following the Quiet Periods**  
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18 18. During the relevant period, research analysts played a pivotal role in winning  
19 investment banking business for TWP. Once TWP's investment banking department  
20 decided to compete for a company's investment banking business, particularly for an  
21 IPO, research analysts played a critical role in obtaining that business.  
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24 19. One of a research analyst's significant responsibilities was to assist in TWP's sales  
25 "pitch" where TWP explained to a company or an issuer why it should select TWP to  
26 be the lead managing underwriter for the offering or to be a member of an  
27 underwriting syndicate. According to TWP's October 2000 equity research job  
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1 descriptions, vice president-level analysts' duties and responsibilities included  
2 "developing the ability to pitch and win corporate finance mandates." The job  
3 description summary further stated that vice presidents "are building industry-wide  
4 relationships that the Firm will monetize via a variety of brokerage and capital market  
5 products."

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8 20. The summary of TWP principal-level analysts' job description stated that they "have  
9 built industry-wide relationships that the Firm can monetize via a variety of capital  
10 markets products." TWP principal-level analysts' duties and responsibilities included:

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12 Develop[ing] a Research Franchise that generates \$10-\$15 MM+ of  
13 average annual revenues from multiple revenue streams  
(Brokerage, CF, M&A, Private Equity) . . . [and] position[ing] the  
14 Firm to pitch and win corporate finance mandates.

15 21. The summary of TWP partner-level analysts' job description stated as well that they  
16 "have built industry-wide relationships that the Firm can monetize via a variety of  
17 capital markets products." TWP partner-level analysts' duties and responsibilities  
18 included:

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20 Continually develop[ing] and maintain[ing] a Research Franchise  
21 that generates \$20-\$30 MM of average annual revenues from  
22 multiple revenue streams (Brokerage, Corporate Finance, M&A,  
23 Private Equity) . . . [and] position[ing] the Firm to pitch and win  
corporate finance mandates including lead managed transactions.

24 22. In advocating retention of TWP, research analysts provided material regarding their  
25 research to be included in the pitch books presented to the company or issuer. They  
26 also routinely appeared with investment bankers at the pitches to help sell TWP  
27 services to the potential client. TWP pitch books to potential clients included

1 representations about the role the research analyst would play if TWP obtained the  
2 business. In describing the "Role of Research," the pitch book also provided a  
3 roadmap for the amount and type of coverage that the research department would  
4 provide. Examples of analysts' participation in the "pitch" process are described  
5 below.

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8 **Loudcloud**

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10 23. Loudcloud, Inc., now known as Opsware, is a company that provides business  
11 internet infrastructure services. TWP participated as a member of the underwriting  
12 syndicate in Loudcloud's March 9, 2001 IPO. Loudcloud's stock was quoted on the  
13 NASDAQ National Market under the ticker symbol LDCL until August 2002, when the  
14 company changed its name to Opsware. Since the name change, the company's  
15 stock has been quoted under the ticker symbol OPSW.

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18 24. TWP's relationship with Loudcloud began in February 2000 when the then chairman  
19 and founder of Loudcloud contacted a TWP partner and senior research analyst  
20 ("Loudcloud Senior Analyst"). Thereafter, the Loudcloud Senior Analyst and TWP  
21 investment bankers met with Loudcloud to discuss potential financing for the  
22 company.

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25 25. Prior to Loudcloud's IPO, the Loudcloud Senior Analyst mentioned Loudcloud in a  
26 periodic industry report dated June 19, 2000. TWP also invited Loudcloud to attend  
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1 its annual "Growth Forum" held in late June 2000. Thereafter, TWP solicited  
2 underwriting work for Loudcloud's IPO in a presentation made on or about August 16,  
3 2000. During the presentation, TWP touted its ability to provide "aftermarket  
4 support," which included, in part, research coverage. The presentation provided case  
5 studies on two companies that TWP had covered. The case studies highlighted the  
6 amount and types of research, i.e., reports specific to the particular company,  
7 periodic industry reports, and white papers that TWP provided for these two  
8 companies, suggesting that TWP would do the same for Loudcloud. TWP also  
9 highlighted the fact that it mentioned Loudcloud in a June 19, 2000 TWP report and  
10 that Loudcloud had attended TWP's annual "Growth Forum" conference.  
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14 26. The presentation included biographical and professional information about the two  
15 TWP analysts who would be covering the company along with a list of companies  
16 that they previously and currently covered. The presentation also touted TWP's  
17 ability to communicate Loudcloud's "story" through, in part, TWP's "all-star ranked  
18 research coverage." In a November 4, 2000, e-mail, the Loudcloud Senior Analyst  
19 boasted that "Loudcloud is a deal that I won, I lead [sic] this pitch with [a TWP vice  
20 president and junior research analyst]."  
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24 27. On September 22, 2000 and February 9, 2001, TWP investment bankers and the  
25 research analysts who worked on the Loudcloud IPO sent a memorandum to TWP's  
26 Commitment Committee in support of TWP's participating in the Loudcloud IPO.  
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1 28. On April 3, 2001, after TWP participated as an underwriter in the Loudcloud IPO, the  
2 Loudcloud Senior Analyst e-mailed senior Loudcloud management stating:  
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4 "Gentlemen: this e-mail is to inform you that, as promised during the Thomas Weisel  
5 Partners [sic] IPO pitch, I initiated written research coverage on Loudcloud this  
6 morning – 25 days (to the hour) following the pricing of the offering on March 8<sup>th</sup>. Our  
7 First Call note we will be posted shortly and our +20 page written research report,  
8 that you reviewed this weekend and we discussed changes to yesterday, is being  
9 sent to editorial and printing today." TWP also provided research coverage of  
10 Loudcloud in other periodic industry reports or notes during 2001. TWP's Loudcloud  
11 research reports, notes, and other industry publications discussing Loudcloud were  
12 distributed through Public Services.  
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14 **Gemplus**

15 29. Another example of analyst participation in the pitch process is with respect to  
16 Gemplus International, S.A. ("Gemplus"), a French company that provides "smart"  
17 cards for wireless communications and transactions. TWP participated as a member  
18 of the underwriting syndicate in Gemplus' U.S. IPO of American Depository Shares  
19 on December 8, 2000, and Gemplus' stock has since been quoted on the NASDAQ  
20 National Market under the ticker symbol GEMP.  
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24 30. TWP solicited underwriting work for the Gemplus U.S. IPO in a presentation to  
25 company management on or about September 15, 2000. In the presentation, TWP  
26 touted its ability to provide research coverage from "multiple angles" through reports  
27 specifically related to the company as well as regularly published industry reports  
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1 highlighting several companies. TWP also presented a case study of research  
2 coverage it provided on another company, Verisign, Inc. On a chart depicting  
3 Verisign's trade volume and increasing stock price, TWP highlighted dates upon  
4 which TWP published recommendations of Verisign's stock. In one instance, the  
5 presentation states, "12/21/99 TWP upgrades [Verisign] to a strong buy. Stock jumps  
6 \$35 in one day," suggesting that TWP could provide the same sort of coverage and  
7 results for Gemplus.  
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10 31. A TWP partner and senior research analyst ("Gemplus Senior Analyst") had  
11 previously developed a relationship with Gemplus management and was largely  
12 responsible for TWP being selected as an underwriter for Gemplus' U.S. IPO. A  
13 TWP vice-president and junior research analyst ("Gemplus Junior Analyst") assisted  
14 the Gemplus Senior Analyst in his research of the company. According to the lead  
15 TWP investment banker on the Gemplus U.S. IPO, Gemplus, in selecting TWP as an  
16 underwriter, wanted "to make sure that [the Gemplus Senior Analyst] will be the lead  
17 [analyst], with [the Gemplus Junior Analyst] on the deal. . . ."  
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20 32. A venture capital firm with whom TWP had a business relationship also played a role  
21 in Gemplus awarding TWP with an underwriting slot on the IPO. The venture capital  
22 firm, Gemplus' controlling shareholder, guaranteed TWP a "minimum total fee of \$3  
23 million for being a member of the Gemplus underwriting syndicate."  
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1 33. On November 21, 2000, the TWP investment bankers, as well as the TWP research  
2 analysts who worked on the Gemplus U.S. IPO, sent a memorandum to TWP's  
3 Commitment Committee in support of TWP's participation in the Gemplus U.S. IPO.  
4 According to this memorandum, the TWP analysts prepared financial models after  
5 spending "extensive time with [the lead underwriter] and the company."  
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8 34. On January 3, 2001, the TWP analysts visited the venture capital firm's San  
9 Francisco office and discussed Gemplus, among several items, with two senior  
10 partners of the venture capital firm. On January 4, 2001, the Gemplus Junior Analyst  
11 e-mailed one of the partners of the venture capital firm, writing that "in keeping w/our  
12 commitment to support the [Gemplus] stock, we are initiating research coverage  
13 tomorrow, Fri., the first day possible after the 25-day quiet period expires in the  
14 States." The Gemplus Junior Analyst also advised the venture capital firm partner  
15 that "we have not yet had an opportunity to speak w/ [the new Gemplus CFO]  
16 regarding any substantive/necessary changes to our model and full report." The  
17 Gemplus Junior Analyst continued, "as such, we will publish an abbreviated note in  
18 the interim, and would like to set up a conference call as soon as possible to discuss  
19 any necessary changes so we can get the full report to our institutional client base."  
20 The Gemplus Junior Analyst attached a copy of TWP's European version of the  
21 Gemplus report to the e-mail and advised that "we will use as the starting point for  
22 any new revision."  
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1 35. On January 5, 2001, the Gemplus Senior Analyst e-mailed Gemplus' senior  
2 management, as well as partners at the venture capital firm, stating: "Gentlemen: As  
3 promised, I am pleased to send you this research note that was transmitted to First  
4 Call this morning. This is our launch of research coverage on Gemplus, 25 days to  
5 the hour, following the successful company public offering in the U.S. and Europe."  
6 The Gemplus Senior Analyst continued in the e-mail, "we await your final comments  
7 on our lengthy written research report that we have already sent you. Following our  
8 joint discussions – we will follow through with the publication of the report. Again, it  
9 has been a pleasure working with both the Gemplus and [venture capital]  
10 management teams. . . We look forward to working together in 2001 and beyond." In  
11 addition to soliciting comments of his research report from Gemplus management,  
12 the Gemplus Senior Analyst solicited comments on the report from the controlling  
13 shareholder of Gemplus. The Gemplus Senior Analyst published the full research  
14 report on January 16, 2001.  
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19 36. The Gemplus Senior Analyst provided research coverage of the company until  
20 August 1, 2001. TWP's Gemplus research reports, notes, and other industry  
21 publications were distributed through Public Services.  
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1                   Research Department Made Coverage Decisions Based Upon Investment

2                   Banking Concerns

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4                   37. TWP's equity research department also made coverage decisions based, in part, on  
5                   investment banking concerns. TWP prepared research "Drop Lists" that detailed the  
6                   institutional commissions generated by the covered companies, the trading profit and  
7                   loss, the names of the institutional investors and venture capitalist firms who held  
8                   stock in the covered companies, and the banker feedback concerning whether to  
9                   drop research coverage. Explaining a January 2001 version of the research Drop  
10                  List, TWP's Chief Operating Officer of Investment Banking ("COO of Investment  
11                  Banking"), e-mailed TWP's Head of Corporate Finance, and TWP's Director of Sales:  
12                  I've made an attempt to get banking's feedback on potential banking business for  
13                  each of these clients. We should also assess the potential impact on affiliated  
14                  venture capitalists for those companies we decide to drop. . . I will be in touch to  
15                  schedule a meeting for us to review the list in more detail and provide specific  
16                  recommendations to [TWP's Chief Operating Officer] and [TWP's then acting Director  
17                  of Research].

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20                  38. With regards to the banker feedback section of a February 2001 Drop List, reasons to  
21                  "keep" research coverage included: "recent IPO," "M&A engagement," "good banking  
22                  client," "M&A prospects," "multiple fee opportunity," and "potential M&A" Reasons to  
23                  "hold" coverage included: "waiting for M&A fee (Jan 01)," and a named investor is  
24                  "considering investing."

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Stamps.com

39. An example of TWP's decision to drop or effectively to cease research coverage is the case of Stamps.com, Inc., a company that provided Internet postage services. Stamps.com conducted its IPO on June 24, 1999, and its stock has since been quoted on the NASDAQ National Market under the ticker symbol STMP. TWP participated as a member of the underwriting syndicate for the IPO.

40. On July 21, 1999, a TWP partner and senior research analyst ("Stamps.com Senior Analyst") initiated research coverage on Stamps.com with a "Buy" rating. TWP continued its research coverage of Stamps.com in reports it issued during 1999 and 2000. TWP also issued other periodic industry reports or notes mentioning Stamps.com during the relevant period. TWP's Stamps.com research reports, notes, and other industry publications discussing Stamps.com were distributed through Public Services.

41. The Stamps.com Senior Analyst maintained a "Buy" rating on Stamps.com until October 29, 1999, the last date on which he issued a research note on the company. On December 6, 1999, Stamps.com conducted a secondary offering. TWP was again a member of the underwriting syndicate for that offering.

42. In late 1999, TWP transitioned research coverage on the company from the Stamps.com Senior Analyst to a TWP vice president and junior research analyst ("Stamps.com Junior Analyst"). On January 29, 2000, the Stamps.com Junior

1 Analyst initiated research coverage with a "Buy" rating. On February 7, 2000,  
2 Stamps.com acquired another company and TWP provided Stamps.com with a  
3 fairness opinion regarding the acquisition.  
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6 43. The Stamps.com Junior Analyst maintained his "Buy" rating on Stamps.com until  
7 September 19, 2000 when he ceased publishing any additional research on the  
8 company. During the time period that he actively covered the company, the  
9 Stamps.com Junior Analyst maintained a "Buy" rating on Stamps.com despite the  
10 steady decline of the company's stock price from \$35.12 on January 27, 2000 to  
11 \$6.00 on September 19, 2000.  
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14 44. On November 27, 2000, the Stamps.com Junior Analyst e-mailed a TWP partner and  
15 Director of East Coast Research (in December 2000, this TWP partner became the  
16 acting Director of Research) explaining reasons why TWP should "kill," or  
17 discontinue, research coverage on Stamps.com. The Stamps.com Junior Analyst  
18 explained that: (1) Stamps.com was not "core" to the companies he was then  
19 covering; (2) there was "no more [investment] banking [business] to be done"; and (3)  
20 that there was "limited commission opportunity" as a market maker in Stamps.com's  
21 stock.  
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25 45. With regard to the lack of additional investment banking business, the Stamps.com  
26 Junior Analyst explained in more detail that: (1) TWP had been paid for the  
27 Stamps.com IPO, a follow-on offering, and a fairness opinion for a merger; (2)  
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1 Stamps.com had retained another investment banking firm to review the company's  
2 strategic options; and (3) contrary to his earlier belief, a Stamps.com wholly-owned  
3 subsidiary was unlikely to do a 2001 IPO.

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6 46. The Stamps.com Junior Analyst also explained the "sensitivities" associated with  
7 dropping coverage. Those "sensitivities" included the fact that certain venture  
8 capitalists, who were also TWP clients, had investments in Stamps.com. He advised  
9 his supervisor that one venture capital firm "is a big [institutional] client and has  
10 owned all the way down." Despite these "sensitivities," the Stamps.com Junior  
11 Analyst pointed out to his supervisor that the venture capitalists "hired [another  
12 investment banking firm] not us for potential M&A trade" and that there would be  
13 "limited downside on [Stamps.com] stock from cutting research sponsorship."

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16 47. On January 8, 2001, the acting Director of Research, responded to the Stamps.com  
17 Junior Analyst's November 27, 2000 e-mail with a number of edits and instructions to  
18 send the e-mail to other senior managers of TWP's Sales and Trading Department,  
19 Private Client Department, and Corporate Finance for their "reactions" to the  
20 Stamps.com Junior Analyst's recommendation. Senior TWP management did not  
21 object to dropping research coverage on Stamps.com and, in response to the  
22 Stamps.com Junior Analyst's e-mail, the head of TWP Corporate Finance advised  
23 the Stamps.com Junior Analyst to "drop" coverage on Stamps.com. However, on  
24 January 12, 2001, TWP's COO of Investment Banking e-mailed the Stamps.com  
25 Junior Analyst advising him that the head of the firm wanted him to "hold on to this  
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1 stock for now" but that he "shouldn't feel that [he had] to do any work on it, just don't  
2 drop it." The COO of Investment Banking further explained that TWP had a number  
3 of venture capitalist backed stocks in the Stamps.com sector and that the head of the  
4 firm "wants to manage this relationship carefully."  
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7 48. The Stamps.com Junior Analyst did not publish any research on Stamps.com after its  
8 last note on September 19, 2000. However, TWP never issued a note that it was  
9 dropping coverage on Stamps.com.  
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11 **Verisign**

12 49. Verisign, Inc. is a provider of digital trust services that enable businesses and  
13 consumers to engage in commerce and communications. Verisign's IPO was on  
14 January 29, 1998, and its stock has since been quoted on the NASDAQ National  
15 Market under the ticker symbol VRSN. TWP did not participate in the underwriting of  
16 this IPO.  
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19 50. On June 25, 1999, TWP, through a research report issued by a TWP partner and  
20 senior research analyst ("Verisign Senior Analyst"), initiated research coverage on  
21 Verisign with a "Buy" rating. TWP continued research coverage of Verisign in reports  
22 issued during the relevant period. TWP also featured Verisign in other periodic  
23 industry reports or notes during the relevant period. TWP's Verisign research  
24 reports, notes, and other industry publications discussing Verisign were distributed  
25 through Public Services.  
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1 51. In November 1999, TWP transitioned coverage of Verisign from the Verisign Senior  
2 Analyst to a TWP vice president and junior research analyst ("Verisign Junior  
3 Analyst"). The Verisign Junior Analyst maintained the "Buy" rating on Verisign until  
4 December 21, 1999, when he upgraded his rating to a "Strong Buy." He maintained  
5 that rating until January 25, 2001, when he downgraded Verisign's rating to a "Buy."  
6 After the Verisign Junior Analyst advised Verisign's CEO that he was downgrading  
7 the stock, the Verisign CEO called a TWP partner and demanded that TWP fire the  
8 Verisign Junior Analyst. On February 2, 2001, TWP terminated the Verisign Junior  
9 Analyst, along with a number of other research analysts, and transitioned Verisign  
10 coverage.

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14 52. On April 16, 2001, the Verisign Senior Analyst re-initiated research coverage on  
15 Verisign with a "Buy" rating. The Verisign Senior Analyst also e-mailed a number of  
16 TWP investment bankers a copy of his research report and advised them that he had  
17 "spoken at length with [Verisign's CFO and CEO] re: possible TWP banking at  
18 Verisign, they will make available last week of May for us to pull together a  
19 presentation they have asked me to co-ordinate. Please advise who wants to be  
20 involved." On April 27, 2001, the Verisign Senior Analyst upgraded Verisign's rating  
21 to a "Strong Buy."

22

23

24

25 53. The Verisign Senior Analyst and TWP investment bankers prepared a pitch  
26 presentation for Verisign management. On May 29, 2001, the Verisign Senior  
27 Analyst and TWP investment bankers drove to Verisign's offices in Silicon Valley and  
28

1 made an investment banking pitch to the company's management. The pitch book  
2 prepared for the May 29, 2001 presentation touted TWP's research role as a "strong  
3 supporter of Verisign's story," and the Verisign Senior Analyst's recent upgrade of the  
4 stock to a "Strong Buy."  
5

6

7 54. The Verisign Senior Analyst continuously covered Verisign from April 16, 2001 to  
8 September 10, 2001, despite his participation in TWP's pitch to Verisign for  
9 investment banking business. TWP transitioned research coverage of Verisign on  
10 October 26, 2001, from the Verisign Senior Analyst to another analyst who then  
11 initiated coverage with a "Buy" rating.  
12

13

14 D. **TWP ISSUED RESEARCH REPORTS ON THREE COMPANIES THAT WERE NOT**  
15 **BASED ON PRINCIPLES OF FAIR DEALING AND GOOD FAITH AND DID NOT**  
16 **PROVIDE A SOUND BASIS FOR EVALUATING FACTS, CONTAINED**  
17 **EXAGGERATED OR UNWARRANTED CLAIMS ABOUT THESE ISSUERS,**  
18 **AND/OR CONTAINED OPINIONS FOR WHICH THERE WAS NO REASONABLE**  
19 **BASIS**

20

21 **InfoSpace**

22

23 55. InfoSpace, Inc., is a diversified technology and services company. TWP was an  
24 underwriter for InfoSpace's March 30, 1999 secondary offering. On April 1, 1999, a  
25 TWP partner initiated coverage of InfoSpace with a "Buy" rating. TWP maintained its  
26 "Buy" rating on InfoSpace through December 7, 1999. Shortly thereafter, TWP  
27 transitioned coverage of InfoSpace from a TWP partner to a vice president and junior  
28

1 research analyst ("InfoSpace Research Analyst"). InfoSpace's stock trades on the  
2 NASDAQ National Market under the ticker symbol INSP.

3

4 56. In January 2000, the InfoSpace Research Analyst initiated his coverage on  
5 InfoSpace with a "Buy" rating, which he maintained until he lowered it to "Market  
6 Perform" in July 2001. During that time, the price of InfoSpace's stock declined from  
7 \$43 to about \$2. Despite his "Buy" rating, as early as January 2001 and continuing  
8 over the next four months, the InfoSpace Research Analyst had serious doubts about  
9 InfoSpace's business prospects and was privately telling others that the stock was  
10 not a buy and to "get out of" InfoSpace.

11

12

13

14 57. In January 2001, the TWP InfoSpace Research Analyst submitted a draft InfoSpace  
15 research note to a TWP supervisory analyst for review prior to publication. In the  
16 draft report, the InfoSpace Research Analyst recommended that investors await  
17 certain information from the company "before considering purchasing shares of  
18 INSP." The supervisory analyst edited the report suggesting that the InfoSpace  
19 Research Analyst remove the language above, and advised him that "if the stock is  
20 BUY rated, we cannot tell investors not to buy the stock." Rather than adjust the buy  
21 rating, the InfoSpace Research Analyst issued his report on January 11, 2001 with  
22 the edits the supervisory analyst suggested.

23

24

25

26 58. The InfoSpace Research Analyst privately e-mailed others explaining that he did not  
27 think the stock should be rated a "Buy." For example, on January 22, 2001, the

1 InfoSpace Research Analyst explained to a TWP salesperson: "I can't frickin believe  
2 that I still have [InfoSpace] as a buy rating. I need a drink." In an e-mail later that  
3 same day to a TWP research associate who was working with him, the InfoSpace  
4 Research Analyst explained:

5 while I don't want to piss off [InfoSpace's CEO] I also don't care  
6 that much . . . I think INSP is dead \$ and that upside catalysts are  
7 limited. I don't talk on the stock and the buy rating only gives me  
8 access to mgmt for info on wireless.

9 59. Within minutes of sending this e-mail to his assistant, the InfoSpace Research  
10 Analyst e-mailed TWP's Head of the Product Management Group, TWP's Director of  
11 Sales and TWP's acting Director of the Research Department about changes in  
12 InfoSpace's management which indicated to the InfoSpace Research Analyst that the  
13 company's ability to execute a wireless plan was "probably diminishing." The  
14 InfoSpace Research Analyst further explained that the:

15 heart of the new mgmt team is out and we are left with the same  
16 mgmt team that was in place back in April. I did not have  
17 confidence in that previous mgmt team's ability to take the company  
18 to the next level and I remain skeptical on the company's near term  
19 outlook now. I may be calling the bottom and [InfoSpace's CEO]  
20 will be pissed, but this stock is not a buy.

21 60. Later that same day, the InfoSpace Research Analyst, responding to some of the  
22 acting Director of Research's questions, stated:

23 I do not think INSP falls much, but I cannot comprehend  
24 recommending people buy this . . . would like to swap out of INSP  
25 and into [Openwave Systems ("Openwave"), an InfoSpace  
26 competitor]. . . I have been verbally saying to get out of INSP . . .  
27 basically can sit here with a buy and never speak on stock or I can  
28 downgrade. I do not want to piss off [InfoSpace's CEO], but I  
should have downgraded stock long ago.

1 61. On January 23, 2001, the InfoSpace Research Analyst sent a draft copy of a new  
2 research note with a "Buy" rating on InfoSpace to a supervisory analyst for review.  
3 The draft research note stated, in part: "we recommend that investors remain  
4 cautious on the stock . . ." The supervisory analyst e-mailed the InfoSpace  
5 Research Analyst, stating: "we cannot tell investors to 'remain cautious' on a BUY-  
6 rated stock." The InfoSpace Research Analyst edited the note and deleted the  
7 "remain cautious" language as the supervisory analyst suggested and TWP  
8 published the note that day.  
9

10

11 62. Later in the morning on January 23, the InfoSpace Research Analyst sent e-mails to  
12 a number of people explaining that he should have downgraded the stock. He first e-  
13 mailed his assistant, explaining: "I saw that some people downgraded INSP this  
14 morning . . . I want the stock to increase before we downgrade." The InfoSpace  
15 Research Analyst next explained to TWP's head of sales: "I never did the  
16 downgrade. I missed it weeks ago. Wanted to speak with mgmt first . . . also I'm  
17 hoping shares rebound over the next few weeks. . . then I'll downgrade." The  
18 InfoSpace Research Analyst also e-mailed a TWP investment banker: "Yea. I should  
19 have downgraded INSP last night. I want to have a call with [InfoSpace's CEO] and  
20 tell him I'm going to do it before I do it."  
21

22

23 63. From January 29 through February 13, 2001, the InfoSpace Research Analyst  
24 continued privately to tell the sales and trading departments, and investors with  
25 whom he spoke, that he recommended swapping out of InfoSpace and into  
26  
27  
28

1 Openwave. For example, on January 29, the InfoSpace Research Analyst, in an e-  
2 mail intended for TWP internal use only, wrote to the sales and trading departments  
3 that InfoSpace's "2001 guidance will be negative. Swap into Openwave." That same  
4 morning, the InfoSpace Research Analyst also e-mailed TWP's head of product  
5 management, asking him to mention during the morning call with the sales and  
6 trading departments that investors should swap out of InfoSpace and into Openwave.  
7

8

9 64. While privately telling TWP sales and trading personnel and investors with whom he  
10 spoke to swap out of InfoSpace, the InfoSpace Research Analyst nonetheless  
11 published yet another company research note on January 30, 2001 with a "Buy"  
12 rating. Later that morning, the TWP InfoSpace Research Analyst responded as  
13 follows to an e-mail from an individual at another broker-dealer that noted another  
14 broker-dealer was cutting its earnings per share estimates on InfoSpace: "We did the  
15 same. Although I still think that '01 numbers are complete bull-shit. . . ."  
16

17

18

19 65. On February 5, 7, and 11, 2001, the TWP InfoSpace Research Analyst again sent e-  
20 mails to TWP's sales and trading departments, stating in part: (1) "Swap from INSP  
21 to [Openwave]"; (2) "We believe accounts should wait on the sidelines until the  
22 company gives greater clarity on its revised strategic plan"; and (3) "we are still  
23 adopting a wait and see attitude until we gain greater confidence that the company  
24 will successfully manage the transition from its consumer services business."  
25 Despite his private comments to the contrary, on February 13, 2001, the InfoSpace  
26 Research Analyst issued a research note in which he reiterated his "Buy" rating.  
27

28

1  
2 66. From February 13, 2001 to April 25, 2001, the InfoSpace Research Analyst did not  
3 issue any new research reports or notes on InfoSpace, and the stock price declined  
4 more than 20%, from \$5.00 to \$3.91. On April 25, the InfoSpace Research Analyst  
5 e-mailed the Deputy Director of Research (on April 16, 2001, a new Director of  
6 Research began working at TWP and the acting Director of Research became the  
7 Deputy Director of Research), explaining:

8  
9 At some point we need to discuss this stock. They report today  
10 post-close. I have never bothered to downgrade the stock, but  
11 made comments to swap into [an InfoSpace competitor]. I think  
12 that any [revenue opportunity] for TWP (i.e. banking) has fallen  
apart so actions can be taken.

13  
14 67. The Deputy Director of Research responded to the InfoSpace Research Analyst and  
15 asked in part, "What are our commissions in INSP? What is it's [sic]current market  
16 cap?" The Deputy Director of Research also told the InfoSpace Research Analyst  
17 that he would run the potential drop in coverage by other TWP department directors  
18 to "build a consensus course of action." The InfoSpace Research Analyst responded  
19 to the Deputy Director of Research explaining that TWP's commissions were:

20  
21 \$145k to-date (\$140 in jan/feb) when we told people to swap into  
22 [the InfoSpace competitor]. We have very strong relationships [a  
23 TWP partner and senior research analyst and InfoSpace's CEO]. . .  
but I do not get the sense that the bankers care anymore.  
24 Maintaining coverage in [short term] is not a big problem since I've  
got the quarterly report 'automated' . . . thanks.

25  
26 68. The Deputy Director of Research e-mailed a number of TWP department directors  
27 and other research analysts to ascertain if they had any problem with dropping  
28

1 research coverage or whether other analysts wanted to pick up coverage of  
2 InfoSpace. The other TWP department directors did not object to dropping coverage  
3 and none of the other TWP research analysts wanted to pick up coverage of  
4 InfoSpace. On April 26, 2001, the InfoSpace Research Analyst issued another  
5 research note on InfoSpace and reiterated his "Buy" rating on the company.  
6

7

8 69. On May 2, 2001, the Deputy Director of Research e-mailed the InfoSpace Research  
9 Analyst as follows:

10

11 Engineer whatever your desired outcome is on this one. If you  
12 want to drop [InfoSpace], I will support you. No interest in it from  
13 the media guys or consumer guys [i.e., TWP research analysts],  
14 and [the head of trading] doesn't care. If you like the insight and  
get some trading commissions and it helps your franchise, then  
keep it. If it is a distraction that doesn't help your impact with  
accounts then . . . Thanks.

15

16 70. On May 30, 2001, the InfoSpace Research Analyst, apparently responding to an e-  
17 mail from another one of his assistants, stated: "I agree re: INSP. I hate having it as  
18 a buy, but nothing I can do now . . ." The InfoSpace Research Analyst maintained  
19 his "Buy" rating on InfoSpace until July 25, 2001 when he finally downgraded the  
20 stock to a "Market Perform" rating. He published his last research note on InfoSpace  
21 on November 26, 2001, again with a "Market Perform" rating. In this report, the  
22 InfoSpace Research Analyst also explained that he was discontinuing his research  
23 coverage of InfoSpace.

24

25

26

27 **Level 3 Communications**

28 71. Level 3 Communications, Inc. is a telecommunications and information services

1 company that operates an advanced international facilities-based communications  
2 network based on Internet Protocol technology. Level 3's stock trades on the  
3 NASDAQ National Market under the ticker symbol LVLT.  
4  
5

6 72. TWP commenced its research coverage of Level 3 with a "Buy" rating and a year-end  
7 \$100 price target on September 15, 2000, when the stock opened at \$78.25 per  
8 share. TWP maintained its "Buy" rating on Level 3 even as the stock price declined  
9 from \$78.25 per share to \$5.97 per share on June 18, 2001. Not until June 19, 2001  
10 did TWP downgrade its rating of Level 3 to "Market Perform." TWP continued to  
11 cover Level 3 until October 26, 2001, when it discontinued coverage. TWP re-  
12 initiated coverage on Level 3 on January 20, 2004.  
13  
14

15 73. On May 21, 2001, when TWP rated Level 3 a "Buy" and its shares were trading at  
16 \$13.06, another firm covering Level 3 lowered its rating from "Strong Buy" to "Market  
17 Underperform." TWP's Deputy Director of Research, who was aware of the  
18 downgrade, e-mailed the TWP vice president and research analyst covering the  
19 stock ("Level 3 Analyst") about the "Buy" rating stating: "doesn't sound like a buy." In  
20 a series of e-mails that day, the Level 3 Analyst responded to the inquiries  
21 concerning the "Buy" rating and explained that he wanted to delay the downgrade to  
22 ensure that Level 3 executives attended a conference that TWP sponsored:  
23  
24

25       • It isn't [a buy]. I'm waiting until after the conference [TWP's  
26 annual "Growth Forum" conference], and before the next quarter to  
27 downgrade. If we do it now it won't look as aggressive as if we do it  
28 in front of their quarter. So we'll probably downgrade around the  
beginning of July. The stock isn't going to make a significant move

1 until then. We expect it will probably trade in the mid-teens. We're  
2 expecting the stock to move down into single digits after another  
3 "average" quarter, and possible downward revision in estimates.

4 • There is also the issue of wanting to ensure that they come  
5 to our conference and speak on our panel. If I downgrade right  
now they will assuredly pull from our conference and we can't  
afford that.

6 • We have always maintained the stock is a speculative buy.  
7 We've been very clear that there were issues on this name, but that  
8 as long as you knew what you were getting into it was a good stock  
9 to trade. Just recently it has become very clear that the company  
10 [is] settling into a single market company, and the issues haven't  
11 gone away. In my commentary to the clients I am positioning it as  
12 a name that they can still trade, but one that will probably see a  
13 downward trend before a significant upward movement.

14 74. On May 31, 2001, in response to an e-mail from TWP's Director of Communications  
15 Services Research advising that he had just had a conversation with a firm that was  
16 "very negative on level3," the Level 3 Analyst stated:

17 we have been negative on the name as well. I've basically been  
18 telling our clients that it is a great short. They're on the verge of  
19 laying off almost 1,000 people (not yet announced yet). They are  
20 still trading at a premium valuation to Williams and 360. I haven't  
21 lowered the rating mainly because I need them to show up at our  
22 conference. If I lower to a [Market Perform] I guarantee they won't  
23 attend. We'll lower the rating after the conference, in front of the  
24 quarter.

25 75. Despite the Level 3 Analyst's view of the company expressed in the May 21 and 31,  
26 2001, e-mails, he maintained his "Buy" rating in the stock for almost another month,  
27 until he finally downgraded the stock to "Market Perform" on June 19, 2001.

28 **Sprint FON Group**

29 76. Sprint FON Group is comprised of Sprint's wireline telecommunications operations,

1 including long distance, local phone, product distribution and directory publishing.

2 Sprint FON Group's stock trades on the NYSE under the ticker symbol FON.

3

4 77. On June 13, 2001, before initiation of coverage and the announcement of a rating,

5 the TWP vice president and junior research analyst assigned to cover the stock

6 ("FON Research Analyst") attended a meeting at FON's headquarters with members

7 of the FON management. Following this meeting, the FON Research Analyst e-

8 mailed the Director of Communications Services Research, stating:

9

10 this is a market perform company. No 2 ways about it. However,  
11 I'm aware of the conflicrt [sic] that is arising due to a better than  
12 average probability of our getting on an FON convert deal. Need to  
13 speak to you about the rating. We could go out with a Buy based  
14 on our belief that they are going to accomplish a couple of things,  
15 and then explain that failure to do so will cause us to downgrade.  
16 We're protected in that case. Let's talk tomorrow.

17 78. On June 19, 2001, TWP initiated coverage of FON with a "Buy" rating. In that report,  
18 TWP did not disclose that one reason that it had made a "Buy" recommendation was  
19 the fact that TWP hoped to obtain investment banking business from Sprint.

20 **E. TWP RECEIVED PAYMENT IN CONSIDERATION OF ITS PROVIDING**  
21 **RESEARCH COVERAGE OF HOTJOBS.COM**

22 79. Between 1999 and 2001, TWP received payment from the proceeds of at least one  
23 underwriting to compensate the firm for services that included publishing research on  
24 the issuer. Despite having an obligation to do so, TWP failed to disclose in research  
25 reports or elsewhere that it received the payment, in part, as compensation for  
26 issuing the reports.

27

28

1  
2 80. In August 1999, Hotjobs.com, Ltd., conducted an IPO for which another broker-dealer  
3 acted as lead underwriter. TWP was not included in the syndicate for the Hotjobs  
4 IPO. Although not a member of the original syndicate, TWP did act as an underwriter  
5 for a Hotjobs.com secondary offering that took place on November 10, 1999.  
6

7  
8 81. In connection with the Hotjobs IPO, the lead underwriter for the Hotjobs IPO made a  
9 payment of \$40,000 to TWP by a check dated November 4, 1999. The lead  
10 underwriter's records concerning the IPO indicate that the lead underwriter made the  
11 payment in settlement of a "guaranteed" selling concession to be paid in either stock  
12 or cash. The lead underwriter's records indicate that it guaranteed the selling  
13 concession to TWP in consideration of the fact that "[a TWP research partner] will  
14 pick up research." TWP did not disclose or cause to be disclosed the fact of this  
15 payment.  
16

17  
18  
19 82. On September 9, 1999, TWP, through a research report issued by the TWP research  
20 partner, initiated research coverage on Hotjobs.com with a "Buy" rating. TWP  
21 continued its research coverage concerning Hotjobs.com in reports it issued during  
22 1999 and 2000. TWP upgraded Hotjobs.com to a "Strong Buy" on February 16,  
23 2000.  
24

25 83. TWP also provided research coverage to Hotjobs.com in other publications during  
26 1999 and 2000. TWP's Hotjobs.com research reports, notes, and other publications  
27 were distributed through Public Services.  
28

1 84. TWP did not disclose that it had received consideration, or the amount thereof, for its  
2 research or other publications concerning Hotjobs.com in any of its publications  
3 concerning Hotjobs.com.  
4  
5

6 **F. TWP FAILED TO ENSURE PUBLIC DISCLOSURE OF PAYMENTS IT MADE**  
7 **FROM THE PROCEEDS OF UNDERWRITINGS TO BROKERAGE FIRMS TO**  
8 **ISSUE RESEARCH COVERAGE REGARDING ITS INVESTMENT BANKING**  
9 **CLIENTS**

10 85. During the relevant period, TWP paid portions of certain underwriting proceeds to  
11 other brokerage firms to initiate or continue research coverage on issuers for whom  
12 TWP served as lead or co-manager. TWP knew that these payments were, in part,  
13 for research. TWP did not take steps to ensure that the brokerage firms it paid to  
14 initiate or continue coverage of its investment banking clients disclosed that they had  
15 been paid to issue such research. Further, TWP did not disclose or cause to be  
16 disclosed in offering documents or elsewhere the fact of or reason for such  
17 payments.  
18

19  
20 **Arena Pharmaceuticals**

21 86. In June 2001, TWP acted as lead underwriter for a secondary offering of securities by  
22 Arena Pharmaceuticals, Inc. In connection with that underwriting, TWP made  
23 payments totaling \$325,000 to three broker-dealers in consideration of their providing  
24 research coverage of Arena Pharmaceuticals stock. The check stub for each of the  
25 payments described the payment as "Research Fees for Arena Pharmac." TWP did  
26 not ensure these payments were disclosed to the public by the broker-dealers in their  
27 published reports on Arena Pharmaceuticals.  
28

**Proxicom**

87. In October 1999, TWP acted as lead underwriter for a secondary offering of securities by Proxicom, Inc. In connection with that underwriting, TWP made payments totaling \$50,000 to two firms in consideration of those firms providing research coverage concerning Proxicom securities. The check stub for each of those payments indicated that the check was in consideration of "Research Proxicom." TWP did not ensure these payments were disclosed to the public by the broker-dealers in their published reports on Proxicom. TWP included another \$25,000 for payment to a third firm in its expense budget for the Proxicom underwriting syndicate. However, TWP did not pay that firm. TWP's accounting records indicate the payment was "held" until that firm "start[ed] research coverage."

**G. TWP FAILED TO SUPERVISE ADEQUATELY ITS RESEARCH ANALYSTS AND INVESTMENT BANKING PROFESSIONALS**

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

### III. CONCLUSIONS OF LAW

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

1 90. The Alabama Securities Commission finds the following relief appropriate and in the  
2 public interest.

3  
4 91. The Alabama Securities Commission finds that the above conduct is in violation of  
5 830-x-3-13 (1) & (3) Alabama Administrative Code and 8-6-3(j)(7) Code of Alabama 1975.

6  
7 92. TWP violated 830-x-3-13 (1) and (3) by failing to establish and maintain adequate  
8 policies, systems and procedures for supervision and control of the Research and  
9 Investment Banking Departments reasonably designed to detect and prevent the foregoing  
10 investment banking influences and manage the conflicts of interest to assure compliance  
11 with applicable securities laws and regulations.

12  
13 93. TWP, during the period from July 1999 through 2001, engaged in acts or practices  
14 that created or maintained inappropriate influences by Investment Banking over Research  
15 Analysts, imposed conflicts of interest on its Research Analysts, and failed to manage these  
16 conflicts in an adequate or appropriate manner in violation of just and equitable principles of  
17 trade. The NASD and NYSE have both established rules governing ethical practices and  
18 conduct. The standards established by the NASD and the NYSE are recognized by the  
19 Alabama Securities Commission as minimum standards of ethical conduct for the purposes  
20 of § 8-6-3(j)7, relating generally to dishonest or unethical practices in the securities  
21 business. During the relevant period, TWP engaged in acts and practices violative of:

22 (a) NASD Conduct Rule 2110 requiring members to observe high standards of  
23 commercial honor and just and equitable principles of trade;  
24 (b) NYSE Rule 401 requiring that broker dealers shall at all times adhere to the  
25 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;

(d) NASD Conduct Rule 2210(d)1 and 2210(d)2 prohibiting exaggerated or unwarranted claims in public communications and requiring a reasonable basis for all recommendations made in advertisements and sales literature; and

(e) NYSE Rule 472 prohibiting the issuance of communications that contain exaggerated or unwarranted claims or opinions that lack a reasonable basis.

By engaging in the acts and practices described above that created and/or maintained inappropriate influence by Investment Banking over Research Analysts and therefore imposed conflicts of interest on its Research Analysts, TWP failed to manage these conflicts in an adequate or appropriate manner, in violation of § 8-6-3(j)(7).

94. Nothing in this Order shall be construed as an admission or finding of fraud.

#### IV. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and TWP'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 Investigations by the Alabama Securities Commission and any other action that the Alabama Securities Commission could commence under the Alabama Securities Act on behalf of the state of Alabama as it relates to TWP, or its affiliates, or the current or former directors, officers or employees of TWP or its affiliates arising from or relating to the subject of the Investigations, provided however, that excluded from and not covered by this paragraph 1 are any claims by the Alabama Securities Commission arising from or relating to enforcement of the "Order" provisions contained herein.

1  
2 TWP will CEASE AND DESIST from engaging in acts which violate 830-x-3-13 (1) &  
3 (3) and 8-6-3(j)7, and will comply with 830-x-3-13 (1) & (3) and 8-6-3(j)(7), and will  
4 also comply with the undertakings of Addendum A, incorporated herein by reference.

5

6 2. If payment is not made by TWP or if TWP defaults in any of its obligations set forth in  
7 this Order, the Alabama Securities Commission may vacate this Order, at its sole  
8 discretion, upon 10 days notice to TWP and without opportunity for administrative  
9 hearing and TWP agrees that any statute of limitations applicable to the subject of  
10 the Investigation and any claims arising from or relating thereto are tolled from and  
11 after the date of this Order.

12

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

20

21 4. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of  
22 Acceptance, Waiver and Consent, this Order and the order of any other State in  
23 related proceedings against TWP (collectively, the "Orders") shall not disqualify any  
24 Covered Person from any business that they otherwise are qualified, licensed or  
25 permitted to perform under applicable law of the state of Alabama and any  
26 disqualifications from relying upon this state's registration exemptions or safe harbor  
27 provisions that arise from the Orders are hereby waived.

28

1

2 5. For any person or entity not a party to this Order, this Order does not limit or create any

3 private rights or remedies against TWP including, without limitation, the use of any e-

4 mails or other documents of TWP or of others regarding research practices or limit or

5 create liability of TWP or limit or create defenses of TWP to any claims.

6

7 7. Nothing herein shall preclude the state of Alabama, its departments, agencies, boards,

8 commissions, authorities, political subdivisions and corporations, other than the

9 Alabama Securities Commission and only to the extent set forth in paragraph 1 above,

10 (collectively, "State Entities") and the officers, agents or employees of State Entities

11 from asserting any claims, causes of action, or applications for compensatory, nominal

12 and/or punitive damages, administrative, civil, criminal, or injunctive relief against TWP

13 in connection with certain research and/or banking practices at TWP.

14

15

16 8. TWP agrees not to take any action or to make or permit to be made any public

17 statement denying, directly or indirectly, any finding in this Order or creating the

18 impression that this Order is without factual basis. Nothing in this paragraph affects

19 TWP's: (i) testimonial obligations, or (ii) right to take factual or legal positions in

20 defense of litigation or in defense of other legal proceedings in which the Alabama

21 Securities Commission is not a party.

22

23 9. This Order shall be binding upon TWP and its successors and assigns. Further, with

24 respect to all conduct subject to Paragraph 2 above and all future obligations,

25 responsibilities, undertakings, commitments, limitations, restrictions, events, and

26 conditions, the terms "TWP" and "TWP's" as used herein shall include TWP's

27 successors and assigns (which, for these purposes, shall include a successor or

28 assign to TWP's investment banking and research operations, and in the case of an

1 affiliate of TWP, a successor or assign to TWP's investment banking or research  
2 operations).

3

4

5 **MONETARY SANCTIONS**

6

7 IT IS FURTHER ORDERED, that:

8

9 As a result of the Findings of Fact and Conclusions of Law contained in this Order,  
10 TWP shall pay a total amount of \$12,500,000. This total amount shall be paid as specified  
11 in the SEC Final Judgment as follows:

12

13 1. Five million dollars (\$5,000,000) to the states (50 states, plus the District of Columbia  
14 and Puerto Rico) (TWP's offer to the state securities regulators hereinafter shall be  
15 called the "state settlement offer"). Upon execution of this Order, TWP shall pay the  
16 sum of \$68,531 of this amount to the Alabama Securities Commission as follows:

17

18 a) That in accordance with Section 8-6-19 (j) (1), Code of Alabama 1975, TWP  
19 shall pay to the State of Alabama an administrative penalty in the total sum of  
20 \$50,000, said funds to be tendered in certified funds contemporaneously with the  
21 entry of this Order;

22

23 b) That in accordance with Section 8-6-19 (k) (1), Code of Alabama 1975, TWP  
24 shall pay to the Alabama Securities Commission, as partial reimbursement for the  
25 Commission's cost for investigating this matter, the sum of \$18,531, said funds to be  
26 tendered in certified funds contemporaneously with the entry of this Order;

1           The total amount to be paid by TWP to state securities regulators pursuant to the  
2 state settlement offer may be reduced due to the decision of any state securities  
3 regulator not to accept the state settlement offer. In the event another state  
4 securities regulator determines not to accept TWP's state settlement offer, the total  
5 amount of the Alabama payment shall not be affected, and shall remain at \$68,531;

6       2. Five million dollars (\$5,000,000) as disgorgement of commissions and other monies  
7           as specified in the SEC Final Judgment;  
8       3. Two million dollars five hundred thousand dollars (\$2,500,000) to be used for the  
9           procurement of independent research, as described in the SEC Final Judgment;

10  
11           TWP agrees that it shall not seek or accept, directly or indirectly, reimbursement or  
12 indemnification, including, but not limited to payment made pursuant to any insurance  
13 policy, with regard to all penalty amounts that TWP shall pay pursuant to this Order or  
14 Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any  
15 part thereof are added to the Distribution Fund Account referred to in the SEC Final  
16 Judgment or otherwise used for the benefit of investors.

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

27  
28           **VI.       GENERAL PROVISIONS**

This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the State of Alabama without regard to any choice of law principles. The parties represent, warrant and agree that they have received independent legal advice from their attorneys with respect to the advisability of executing this Order.

TWP 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 TWP to enter into this Consent Order.

This Consent Order shall become final upon entry.

Dated this 5 day of MARCH, 2005

By:   
Joseph P. Borg  
Director  
Alabama Securities Commission



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## CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY TWP

1. TWP 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.
2. TWP 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.
3. TWP 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.
4. TWP understands that the Alabama Securities Commission may make such public announcement concerning this agreement and the subject matter thereof as the Alabama Securities Commission may deem appropriate.

David Baylor represents that he is Chief Administrative Officer of TWP and that, as such, has been authorized by TWP to enter into this Order for and on behalf of TWP.

Dated this 1<sup>st</sup> day of March, 2005

Thomas Weisel Partners, LLC

By: David Baylor

Title: Chief Administrative Officer.

SUBSCRIBED AND SWORN TO before me this 1<sup>st</sup> day of March, 2005.

Notary Public

My Commission expires: 9/30/07

