

1 STATE OF ALASKA
2 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
3 DIVISION OF BANKING, SECURITIES, AND CORPORATIONS
4 P.O. BOX 110807
5 JUNEAU, ALASKA 99811-0807

5 In the matter of)
6 U.S. BANCORP PIPER JAFFRAY INC.) Alaska Order 04-06 S
7 800 Nicollet Mall)
8 Suite 800) CONSENT ORDER
9 Minneapolis, MN 55402,)
Respondent.)

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

12 WHEREAS, coordinated investigations into USBPJ's activities in connection with
13 certain of its equity research and investment banking practices during the period of
14 approximately 1999 through 2001 have been conducted by a multi-state task force and a joint
15 task force of the U.S. Securities and Exchange Commission, the New York Stock Exchange, and
16 the National Association of Securities Dealers (collectively, the "regulators"); and

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

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

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

24 WHEREAS, USBPJ voluntarily elects to permanently waive any right to a hearing on
25 this matter and judicial review of this Administrative Consent Order (the "Order") under the
26 Alaska Securities Act (Act);

27 NOW, THEREFORE, the Alaska division of banking, securities, and corporations
28 (division), as administrator of the Act, hereby enters this Order:

FINDINGS OF FACT

A. Background and Jurisdiction

1. USBPJ is a broker-dealer with its principal place of business in Minneapolis, Minnesota. The firm engages in a full-service securities business, including retail and institutional sales, investment banking services, trading, and research.
2. USBPJ is currently registered with the division as a broker-dealer, and has been so registered since 1972.
3. This action concerns the years 1999, 2000, and 2001 (the "relevant period"). During that time, USBPJ engaged in both research and investment banking ("IB") activities.
4. At various times during the relevant period, USBPJ placed undue emphasis on using its research analysts to maximize opportunities to obtain investment-banking revenues from companies in the technology, telecommunications, and biotechnology industry sectors. Such emphasis on obtaining investment-banking revenue created conflicts of interest for the research analysts that resulted in the issuance of research reports that violated the Act. USBPJ failed adequately to monitor and supervise the conflicts of interest inherent in seeking investment-banking opportunities from companies covered by USBPJ research analysts. USBPJ's violative conduct, described herein, was caused by a flawed organizational structure, combined with inadequate supervision of the conflicts of interest.
5. USBPJ grouped its research analysts by industry sector and those analysts worked as a team with the firm's investment bankers, who focused on the same industry sector. The majority of research analysts' compensation was paid in the form of bonuses, which for some analysts was directly tied to revenues from investment banking transactions of companies in their industry sector. In other cases, the analyst's contribution to investment banking revenue, and investment banker input into analysts' evaluations played a significant part in determining the analysts' bonuses. In certain cases, investment bankers commented in reviews that research analysts needed to become lead analysts, a reference to using their professional opinions and reports to assist the firm in obtaining the top role in investment banking transactions. As a result of these influences, certain USBPJ research analysts indirectly were motivated to obtain, retain and increase investment-banking revenue.
6. In certain instances, USBPJ also provided draft research reports to potential investment banking clients during sales pitches, and this implicit promise of favorable research was an important aspect of USBPJ's attempts to gain the companies' investment banking business. In other instances, after determining to issue research, USBPJ provided company executives with draft reports, including the proposed rating and target price, and solicited comments on the report from those company executives.
7. USBPJ failed to disclose that it received compensation from the proceeds of underwriting for, among other services, providing research. It also paid proceeds of certain

1 underwritings to other broker dealer firms to issue research on companies whose
2 offerings it underwrote and did not ensure that such payments were disclosed.

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

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

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

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

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

- 20 11. In 1998, USBPJ generated equity investment banking revenue of approximately
21 \$79,500,000. That increased by 100 percent to approximately \$159,000,000 in 1999. In
22 2000, revenue from equity investment banking grew to approximately \$269,200,000, a 69
23 percent increase over 1999. In 2001, USBPJ's revenue from equity investment banking
24 was approximately \$153,000,000. From 1999 through 2001, revenue from equity
25 investment banking represented a significant portion of the firm's revenue, accounting for
26 between 19-26 percent of the firm's total revenue.

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

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

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

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

(i) Move to the Left Strategy

- 1
- 2 13. In May 2000, USBPJ's ECM Operating Committee amended its procedures and
3 strategies in a specific effort to gain lead manager status in more offerings. The Lead
4 Manager is the firm typically listed on the left side of the offering prospectus. Thus,
5 USBPJ implemented a plan referred to as the "Move to the Left Strategy." The ECM
6 Operating Committee noted its strong commitment to a "multi-pronged strategy" to
7 obtain lead-manager status on offerings. In instructions to ECM employees, the ECM
8 Operating Committee stated that the firm "must begin to wage a war in earnest for lead-
9 manager status." That plan instituted a "line in the sand" policy: The firm would not
10 accept a syndicate position in any deal unless the firm was placed in the major bracket for
11 the underwriting.
- 12 14. The Research Department played an important role in the firm's Move to the Left
13 Strategy. Specifically, to develop a "lead manager mentality," the firm developed a "lead
14 manager Red Zone training program." That program called for the senior bankers, senior
15 research analysts, and Capital Markets personnel to "go through this special training
16 seminar [focused] on pitching for the lead on public equity transactions."

(ii) Lead Manager Protocol

- 17 15. In August 2000, the head of ECM's syndicate department prepared another specific effort
18 to gain additional lead managed offerings. In setting out his new "Lead Manager
19 Protocol" to all ECM employees, the head of the syndicate department stressed that the
20 "formal protocol of responsibilities... will allow all of us—Investment Banking,
21 Research, Sales, Trading and Capital Markets—to share responsibility for the success of
22 each and every lead-managed offering."
- 23 16. The Lead Manager Protocol, issued in August 2000, called for:
- 24 • the lead banker and lead research analyst to make a presentation to the firm's
25 PreCommitment Committee before any company would be considered for an
26 underwriting;
 - 27 • the research analyst to participate in a "get-to-know-you" session with prospective
28 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

- 1 • the senior analyst to “coordinate with Capital Markets to sort out the aftermarket
2 intentions of each account.”

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

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

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

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

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

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

26 21. One aspect of a research analyst’s function was to play a key role in the process to
27 “pitch” USBPJ to the prospective client. In certain instances, a research analyst’s role at
28 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

1 work hand-in-hand with the investment bankers to provide service and support for the
2 issuer. Research analysts routinely appeared with investment bankers at pitch meetings
3 designed to help sell USBPJ to the potential client and provided information relating to
4 their research in pitchbooks given to prospective client companies.

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

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

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

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

25 (3) **USBPJ Tied Research Analysts' Compensation to Investment Banking
26 Revenue**

26 25. During the relevant period, USBPJ compensated research analysts, in part, based on the
27 amount of investment banking revenue generated within their respective industry sector.
28 This practice created a conflict of interest for research analysts, since analysts were

1 compensated, in part, on issuing objective research and on the firm's success in obtaining
2 investment-banking business.

3 26. Specifically, USBPJ paid certain analysts a percentage of investment banking revenue
4 and institutional commissions generated by companies in their industry sector. The firm
5 entered into written agreements with at least 16 research analysts to pay them a defined
6 percentage of the revenue generated by the companies they covered. This included
7 revenue from net underwriting profits, institutional sales commissions, trading
8 commissions, equity and debt management fees, mergers and acquisition advisory fees,
9 equity and debt private placement fees, research checks, and syndicate trading profits.
10 The defined percentage set forth in these written agreements ranged from a guaranteed
11 7 to 15 percent of the revenues generated by the companies in their industry sector.

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

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

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

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

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

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

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

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

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

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

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

35. In other instances, USBPJ investment bankers suggested to issuer clients that research
reports initiating coverage would be subject to approval by the issuer. For example, on
January 11, 2001, an investment banker wrote to numerous executives at Metromedia
Fiber Network, Inc. ("Metromedia") thanking them for their meeting with a USBPJ
senior research analyst. The banker wrote, "[The analyst] has decided to initiate
coverage with a Strong On Buy, our firm's highest recommendation... his research

1 associate... will be calling you later today to request help in finalizing the report. *Nothing*
2 *will be published without your prior approval.*" (Emphasis added). On January 26,
3 2001, USBPJ initiated coverage of Metromedia with a "strong buy" and a \$27 price
4 target.

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

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

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

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

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

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

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

1 review period, USBPJ gave less than one percent of companies a "sell" recommendation.
2 In certain cases, the firm would discontinue coverage, usually without explanation, rather
3 than drop a company to a sell rating. In those cases, therefore, USBPJ had only a three
4 point rating system.

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

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

9 **(1) Esperion Therapeutics, Inc.**

10 42. In August 2000, USBPJ served as co-manager for the IPO of Esperion Therapeutics, Inc.
11 ("Esperion") and consequently initiated research coverage of Esperion on September 5,
12 2000 with a "buy" rating. On January 9, 2002, a USBPJ senior research analyst stated in
13 an e-mail to a senior investment banker: "ESPR delayed a pipeline product and
14 completely dropped development of a second pipeline product, giving a reason that was
15 nothing short of hokey. So it was bad news all around.... Esperion has not met a single
16 milestone that they have laid out since they went public. Everything has slipped.
17 [Esperion's CEO] is a good scientist, an awful CEO."

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

21 **(2) Triton Network Systems**

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

27 45. On March 30, 2001, the analyst issued a "blast" e-mail to institutional clients with
28 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.

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

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

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

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

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

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

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

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

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

52. For example, in 2000, USBPJ paid underwriting proceeds of \$100,000 to another
underwriter in conjunction with USBPJ's lead manager position on Onyx
Pharmaceuticals' ("Onyx") stock offering. While this underwriter was not invited to

1 participate in Onyx's offering, the payment was made in response to a letter dated
2 September 22, 2000 from the underwriter asking for \$300,000 in "underwriting
3 participation" for continued research and market making. A representative of the
4 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.

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

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

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

16 **II.**

17 **CONCLUSIONS OF LAW**

- 18 1. The division has jurisdiction over this matter pursuant to the Alaska Securities Act.
- 19 2. The division finds that Respondent USBPJ engaged in acts and practices that created
20 and/or maintained inappropriate influence by investment banking over research analysts
21 and therefore imposed conflicts of interest on research analysts. USBPJ failed to manage
22 these conflicts in an adequate and appropriate manner. AS 45.55.025
- 23 3. The division finds that Respondent USBPJ has committed dishonest and unethical
24 practices under AS 45.55.025, as described in the Findings of Fact above, by issuing
25 research that contained opinions for which there was no reasonable basis and/or
26 exaggerated or unwarranted claims.
- 27 4. The division finds that Respondent USBPJ inappropriately threatened executives of a
28 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. AS 45.55.025
5. The division finds that Respondent USBPJ received compensation directly or indirectly,
from an issuer, underwriter or dealer, in part, for issuing research reports, without fully
disclosing the receipt or the amount of the compensation. AS 445.55.025.
6. The division finds that Respondent USBPJ, as described in the Findings of Fact above,
made payments for research to other broker-dealers not involved in an underwriting
transaction, when the firm knew that these payments were made, at least in part, for

1 research coverage, and failed to disclose or cause to be disclosed in offering documents
2 or elsewhere the fact of such payments. AS 45.55.025.

3 7. The division finds that Respondent USBPJ failed to establish and enforce written
4 supervisory procedures reasonably designed to ensure that analysts were not unduly
5 influenced by investment banking concerns. Despite knowledge of research analysts'
6 complex responsibilities and conflicts of interest, Respondent USBPJ failed to implement
7 a system to detect and insulate its research analysts from improper influence and pressure
8 by investment banking personnel. To the contrary, Respondent USBPJ's business
9 practices motivated research analysts to issue research that would attract and retain
10 investment-banking business. AS 845.55.060.

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

12 III.

13 ORDER

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

17 IT IS HEREBY ORDERED:

- 18 1. This Order concludes the investigation by the division and any other action that the
19 division could commence under the Act on behalf of the State of Alaska as it relates to
20 Respondent USBPJ, relating to certain research or banking practices at Respondent
21 USBPJ.
- 22 2. Respondent USBPJ will CEASE AND DESIST from violating the Act and will comply
23 with the Act in connection with the research practices referenced in this Order and will
24 comply with the undertakings of Addendum A, incorporated herein by reference.]

25 3. IT IS FURTHER ORDERED that:

- 26 4. As a result of the Findings of Fact and Conclusions of Law contained in this Order,
27 Respondent USBPJ shall pay a total amount of \$32,500,000.00. This total amount shall
28 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 \$125,000 of this amount to State of Alaska as a civil monetary penalty pursuant to the agreement of the parties, to be deposited in the general fund. 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 Alaska payment shall not be affected, and shall remain at \$125,000;

- 1 b. \$12,500,000 as disgorgement of commissions, fees and other monies as specified
2 in the SEC Final Judgment;
- 3 c. \$7,500,000, to be used for the procurement of independent research, as described
4 in the SEC Final Judgment;
- 5 5. Respondent USBPJ agrees that it shall not seek or accept, directly or indirectly,
6 reimbursement or indemnification, including, but not limited to payment made pursuant
7 to any insurance policy, with regard to all penalty amounts that Respondent USBPJ shall
8 pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether
9 such penalty amounts or any part thereof are added to the Distribution Fund Account
10 referred to in the SEC Final Judgment or otherwise used for the benefit of investors.
11 Respondent USBPJ further agrees that it shall not claim, assert, or apply for a tax
12 deduction or tax credit with regard to any state, federal or local tax for any penalty
13 amounts that Respondent USBPJ shall pay pursuant to this Order or Section II of the SEC
14 Final Judgment, regardless of whether such penalty amounts or any part thereof are added
15 to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise
16 used for the benefit of investors. Respondent USBPJ understands and acknowledges that
17 these provisions are not intended to imply that the division would agree that any other
18 amounts Respondent USBPJ shall pay pursuant to the SEC Final Judgment may be
19 reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under
20 applicable law or may be the basis for any tax deduction or tax credit with regard to any
21 state, federal or local tax.
- 22 6. If payment is not made by Respondent USBPJ or if Respondent USBPJ defaults in any of
23 its obligations set forth in this Order, the division may vacate this Order, at its sole
24 discretion, upon 10 days notice to Respondent USBPJ and without opportunity for
25 administrative hearing.
- 26 7. This Order is not intended by the division to subject any Covered Person to any
27 disqualifications under the laws of any state, the District of Columbia or Puerto Rico
28 (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).
8. 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 the State of Alaska and any
 disqualifications from relying upon this state's registration exemptions or safe harbor
 provisions that arise from the Orders are hereby waived.
9. 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

1 research practices, limit or create liability of Respondent USBPJ or limit or create
2 defenses of Respondent USBPJ to any claims.

- 3 10. Nothing herein shall preclude the State of Alaska, its departments, agencies, boards,
4 commissions, authorities, political subdivisions and corporations, other than the division
5 and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and
6 the officers, agents or employees of State Entities from asserting any claims, causes of
7 action, or applications for compensatory, nominal and/or punitive damages,
8 administrative, civil, criminal, or injunctive relief against Respondent USBPJ in
9 connection with certain research and/or banking practices at Respondent USBPJ.
- 10 11. This Order and any dispute related thereto shall be construed and enforced in accordance
11 with, and governed by, the laws of the State of Alaska without regard to any choice of
12 law principles.
- 13 12. Respondent USBPJ agrees not to take any action or to make or permit to be made any
14 public statement denying, directly or indirectly, any finding in this Order or creating the
15 impression that this Order is without factual basis. Nothing in this Paragraph affects
16 Respondent USBPJ's: (i) testimonial obligations, or (ii) right to take legal or factual
17 positions in defense of litigation or in defense of other legal proceedings in which the
18 division is not a party.
- 19 13. Respondent USBPJ, through its execution of this Consent Order, voluntarily waives their
20 right to a hearing on this matter and to judicial review of this Consent Order under AS
21 45.55.935 and 45.55.940.
- 22 14. Respondent USBPJ enters into this Consent Order voluntarily and represents that no
23 threats, offers, promises, or inducements of any kind have been made by the division or
24 any member, officer, employee, agent, or representative of the division to induce
25 Respondent USBPJ to enter into this Consent Order.
- 26 15. The parties represent, warrant and agree that they have received independent legal advice
27 from their attorneys with respect to the advisability of executing this Consent Order.
- 28 16. This Consent Order shall become final upon entry.

Dated this 29 day of August, 2003.

BY ORDER OF THE ADMINISTRATOR OF
SECURITIES:

/s/ Mark R. Davis
Mark R. Davis
Administrator of Securities