

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CAF030020

TO: Department of Enforcement
NASD

RE: U.S. Bancorp Piper Jaffray Inc.
Respondent, CRD No. 665

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent U.S. Bancorp Piper Jaffray Inc. ("Piper Jaffray," "Respondent," or the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Piper Jaffray alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Piper Jaffray; and
3. If accepted:
 - a. this AWC will become part of Piper Jaffray's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Piper Jaffray;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Piper Jaffray's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. Piper Jaffray may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is

without factual basis. Nothing in this provision affects the testimonial obligations or right of Respondent to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Piper Jaffray also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. Relevant disciplinary history includes the following:

Piper Jaffray has been a registered broker dealer and an NASD member since 1936. Its principal offices are located in Minneapolis, Minnesota. Piper Jaffray engages in a full-service securities business, including retail and institutional sales, investment banking, trading and research.

On June 25, 2002, Piper Jaffray entered into a letter of AWC in which the firm was censured and fined \$250,000 for violating NASD Rule 2110 by threatening to discontinue research coverage and cease making a market in the stock of Antigenics, Inc., if it did not select Piper Jaffray as lead underwriter for a planned secondary offering.

I.

WAIVER OF PROCEDURAL RIGHTS

Piper Jaffray specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Piper Jaffray;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Piper Jaffray specifically and voluntarily waives any right to claim bias or prejudice of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Piper Jaffray further specifically and voluntarily waives any right to claim that a person violated the *ex-parte* prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions

regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

A. Piper Jaffray hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

1. Summary

At various times from 1999 through 2001 (the “relevant period”), Piper Jaffray 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 in two instances resulted in the issuance of research reports that violated the NASD’s advertising rules. Piper Jaffray failed adequately to monitor and supervise the conflicts of interest inherent in seeking investment banking opportunities from companies covered by Piper Jaffray research analysts. Piper Jaffray’s violative conduct, described herein, was caused by a flawed organizational structure, combined with inadequate supervision of the conflicts of interest.

Piper Jaffray 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 were directly tied to revenues from investment banking transactions of companies in their industry sector. In other cases, the analysts’ 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 Piper Jaffray research analysts indirectly were motivated to obtain, retain and increase investment banking revenue.

In certain instances, Piper Jaffray 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 Piper Jaffray’s attempts to gain the companies’ investment banking business. In other instances, after determining to issue research, Piper Jaffray provided company executives with draft reports, including the proposed rating and target price, and solicited comments on the reports from those company executives.

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

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

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

a. Overview of Piper Jaffray and the Financial Contribution of its Equity Capital Markets Division

U.S. Bancorp Piper Jaffray Inc. was founded in 1895 and has been a registered NASD member since 1936.¹ The firm is headquartered in Minneapolis, Minnesota, and has approximately 3,100 employees, including approximately 875 financial advisers, more than 80 investment bankers, and approximately 70 research analysts. Piper Jaffray has operations in 124 offices in 25 states throughout the country.

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

In 1998, Piper Jaffray generated equity investment banking revenue of approximately \$79.5 million. That increased by 100 percent to approximately \$159 million in 1999. In 2000, revenue from equity investment banking grew to approximately \$269,200,000, a 69 percent increase over 1999. In 2001, Piper Jaffray's revenue from equity investment banking was approximately \$153,000,000. From 1999 through 2001, revenue from equity investment banking represented a significant portion of the firm's revenue, accounting for between 19 and 26 percent of the firm's total revenue.

b. Piper Jaffray Aligned Research Analysts With the Firm's Investment Bankers.

i. Piper Jaffray Developed and Implemented Specific Plans To Have Research Analysts Work With Investment Bankers in an Effort to Obtain Investment Banking Business.

During the relevant period, many companies, particularly those in the technology

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

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, Piper Jaffray 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.

(a) Move to the Left Strategy

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

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

(b) Lead Manager Protocol

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

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

- the lead banker and lead research analyst to make a presentation to the firm's Pre-Commitment Committee before any company would be considered for an underwriting;
- the research analyst to participate in a "get-to-know-you" session with prospective investment banking clients as part of a "Day at Piper" session;
- the lead banker and senior analyst to re-present the prospective company client to the Commitment Committee. The lead banker and "senior analyst must

demonstrate continued due diligence effort and must provide renewed commitment to the transaction”;

- research and sales to “set up a roadshow schedule to ensure a targeted and efficient roadshow...[and] focus on ascertaining the right accounts to see and why these are the right accounts;”
- senior analysts to “provide aggressive pre-meeting preparation and post-meeting follow-up to each 1-on-1 appointment;”
- senior analysts to be “available during critical parts of roadshow and pricing”; and
- the senior analyst to “coordinate with Capital Markets to sort out the aftermarket intentions of each account.”

The Lead Manager Protocol described a primary function of a research analyst in communicating regarding the progress of the transaction once the firm had obtained a lead management role in an IPO when it stated:

Senior analyst will coordinate with Capital Markets to communicate a consistent message regarding the progress of the transaction, acting as a supporter of Capital Markets’ message and not as an independent filter The goal of the [s]enior analyst is to reinforce reasonable and exceedable expectations.

ii. Research Analysts “Pitched” for Investment Banking Deals and Advocated for the Issuer at Roadshows.

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

The emphasis on securing investment banking business through pitches and then selling the securities through roadshows gave rise to conflicts of interest for the research analysts. In some instances, the research analyst became a prime contact person for the company with respect to soliciting investment banking business. For example, on May 10, 1999, a research analyst wrote to an officer of E-Machines, a potential investment banking client:

This is my final appeal to be a part of the underwriting team. This is your deal and you control the strings. All we are looking for is ten percent of the economics to participate in the underwriting. This itself should be indicative of my sincere interest in your story ... In the final analysis, it is less important to

have bulge bracket firm as a hood ornament than it is to have a quality analyst who will provide you with the support and coverage your company needs.

iii. Research Analysts' Participation in Pitch Meetings Was Important in Obtaining Investment Banking Mandates.

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

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

iv. In Certain Instances, Pitchbooks Provided to Potential Investment Banking Clients Contained Mock Research Reports Impliedly Promising Favorable Research.

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

For example, in August 2000, Piper Jaffray made a pitch to be the lead underwriter for an offering by TheraSense, a medical technology issuer. In preparing for the pitch, a research analyst prepared a mock research report about the issuer and presented that mock

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

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

c. Piper Jaffray Tied Research Analysts’ Compensation to Investment Banking Revenue.

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

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

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

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

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.

d. Investment Bankers Evaluated Research Analysts' Performance and Influenced Their Bonus Compensation.

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

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

Thus, investment bankers provided significant input in the performance evaluation of research analysts which, in turn, influenced the bonus compensation of those research analysts. For example, an investment banker noted in his banker peer review that a particular analyst:

needs to be proactive in pursuing fee-generating companies

for his coverage list. He is very focused on big cap names that do not pay.

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

e. Piper Jaffray Lacked Procedures and Did Not Adequately Monitor Research Analysts' Sharing of Draft Research Reports With Issuers.

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

Certain draft research reports provided to an issuer included not only the factual portions of a draft report, but also the analyst's valuation, rating and suggested target price. In some cases, company executives were given electronic copies of the research report, and returned to the firm a "red-lined" version of the report with their comments and edits. For example, on September 27, 2001, a Piper Jaffray 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.

In other instances, Piper Jaffray 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, a Piper Jaffray investment banker wrote to executives at Metromedia Fiber Network, Inc. ("Metromedia"), an investment banking client, thanking them for their meeting with a Piper Jaffray senior research analyst. The banker wrote,

<the analyst> has decided to initiate coverage with a Strong Buy, our firm's highest recommendation. * * *his research associate * * *will be calling you later today to request help in finalizing the report. *Nothing will be published without your prior approval.* (Emphasis added).

On January 26, 2001, Piper Jaffray initiated coverage of Metromedia with a "strong buy" and a \$27 price target. And, on November 22, 2000, a Piper Jaffray senior investment banker wrote to executives of Qwest thanking them for an in-person meeting. The banker wrote,

We expect to initiate research coverage within the next few weeks and will submit a draft of such report for your review and approval prior to publication.

Notwithstanding the potential that research analysts could be subjected to pressure by issuers, Piper Jaffray failed to have adequate procedures or controls to monitor such

communications.

f. Piper Jaffray Lacked Procedures And Controls Sufficient To Monitor The Influence of Investment Banking on Research Analysts.

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

On January 18, 2001, Piper Jaffray issued a research report that maintained the previously lowered “buy” rating.² The report included a lower price target than that published previously, cautionary statements about NMSS’s short term prospects and a predicted “struggle” for the company’s shares during the first half of 2001. In the same research report, Piper Jaffray 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, Piper Jaffray 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.” Piper Jaffray subsequently lowered its rating to “neutral” on April 12, 2001.

Moreover, Piper Jaffray rarely issued a sell rating. During most of the review period, Piper Jaffray 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 relevant period, Piper Jaffray gave less than one percent of companies a “sell” recommendation. In certain cases, the firm would discontinue coverage, usually without explanation, rather than drop a company to a sell rating. In those cases, therefore, Piper Jaffray had only a three point rating system.

3. Piper Jaffray Issued Research on Two Companies That Lacked a Reasonable Basis, Or Was Imbalanced in Violation of the NASD Advertising Rule.

As to two companies, Esperion Therapeutics, Inc. and Triton Network Systems, Piper Jaffray issued research reports that violated NASD advertising rules because the research lacked a reasonable basis and was imbalanced.

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

a. Esperion Therapeutics, Inc.

In August 2000, Piper Jaffray served as co-manager for the IPO of Esperion Therapeutics, Inc. (“Esperion”) and consequently initiated research coverage of Esperion on September 5, 2000 with a “buy” rating. On January 9, 2002, a Piper Jaffray senior research analyst stated in an e-mail to a senior investment banker:

ESPR delayed a pipeline product and completely dropped development of a second pipeline product, giving a reason that was nothing short of hokey. So it was bad news all around.

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

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

b. Triton Network Systems

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

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

4. Piper Jaffray Threatened to Drop Research Coverage of Emisphere Technologies, Inc. if It Did Not Award Piper Jaffray the Lead Manager Role in an Offering

In September 1999, Piper Jaffray attempted to compel Emisphere Technologies,

Inc. to select it for investment banking business by informing company executives that it would drop research coverage of the company if it was not selected as the lead manager for an offering of Emisphere's securities. Piper Jaffray's threatening conduct undermined competition for investment banking services and was contrary to NASD rules requiring adherence to high standards of commercial honor and just and equitable principles of trade.

5. Piper Jaffray Failed to Disclose That It Received Payments From Proceeds of Certain Underwritings, In Part, To Publish Research Regarding The Issuer.

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

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

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

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

6. Piper Jaffray 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

From 1999 through 2001, at the direction of certain issuer clients, Piper Jaffray 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. Piper Jaffray 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, Piper Jaffray did not disclose or cause to be disclosed the fact of such payments.

For example, in 2000, Piper Jaffray paid underwriting proceeds of \$100,000 to another broker-dealer in conjunction with Piper Jaffray's lead manager position on Onyx

Pharmaceuticals' ("Onyx") stock offering. While this broker-dealer was not invited to participate in Onyx's offering, the payment was made in response to a letter dated September 22, 2000 from the other firm asking for \$300,000 in "underwriting participation" for continued research and market making. A representative of the other firm 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." Piper Jaffray did not ensure this payment was disclosed to the public by the underwriter in its published research on Onyx.

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

7. Piper Jaffray Failed to Adequately Supervise Its Research Analysts and Investment Banking Professionals.

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

8. Violations

a. Violation of NASD Conduct Rules Due to Conflicts of Interest Resulting From Investment Banking's Influence on Research Analysts.

NASD Conduct Rule 2110 requires members to observe high standards of commercial honor and just and equitable principles of trade. As described above, Piper Jaffray engaged in acts and practices that created and/or maintained inappropriate influence by investment banking over research analysts and therefore imposed conflicts of interest on research analysts. Piper Jaffray failed to manage these conflicts in an adequate and appropriate manner. By reason the foregoing, Piper Jaffray violated NASD Conduct Rule 2110.

b. Piper Jaffray Published Research that Was Exaggerated or Unwarranted, Violating NASD Conduct Rules 2110, 2210(d)(1) and 2210(d)(1)(2).

As described above, Piper Jaffray issued research on Esperion Therapeutics, Inc. and Triton Network Systems that was not based on principles of fair dealing and good faith and did not provide a sound basis for evaluating facts, contained exaggerated or unwarranted claims about these companies, and/or contained opinions for which there was no reasonable basis. By reason of the foregoing, Piper Jaffray violated NASD Conduct Rules 2110, and 2210(d)(1) and 2210(d)(2).

c. Violation of NASD Rule 2110 for Threatening to Drop Research Coverage if the Firm was not Selected as Lead Manager in an Investment Banking Transaction

Piper Jaffray inappropriately threatened executives of a potential investment banking client by stating that Piper Jaffray would drop research coverage of the company if the firm was not selected as the lead manager in an investment banking transaction. By reason of the foregoing, Piper Jaffray violated NASD Conduct Rule 2110.

d. Violation of Section 17(b) of the Securities Act and NASD Rules as a Result of Receiving Payments for Research and Failing to Disclose the Receipt of Such Payments.

Piper Jaffray 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. Section 17(b) of the Securities Act of 1933 [15 U.S.C. § 77q(b)] states:

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

NASD Conduct Rule 2210(d)(1)(A) states in part that “All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered.” NASD Conduct Rule 2110 requires that member firms observe high standards of commercial honor and just and equitable principles of trade.

By reason of the foregoing, Piper Jaffray failed to comply with Section 17(b) of the Securities Act and violated NASD Conduct Rules 2110 and 2210(d)(1)(A).

e. Violation of NASD Conduct Rules by Paying Underwriting Fees to Other Broker-Dealers for Research

NASD Conduct Rule 2210(d)(1)(A) states in part that “All member communications with the public shall be based on principles of fair dealing and good faith and should provide a sound basis for evaluating the facts in regard to any particular security or securities or type of security, industry discussed, or service offered.” As described above, Piper Jaffray made payments for research to other broker-dealers not involved in an underwriting

transaction, when the firm knew that these payments were made, at least in part, for research coverage, and failed to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments. By reason of the foregoing, the Piper Jaffray violated NASD Conduct Rules 2110 and 2210(d)(1)(A).

f. Violation of NASD Rules by Failing to Supervise

NASD Conduct Rule 3010(a) requires members, among other things, to “establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with [NASD’s Rules].”

During the relevant time period, Piper Jaffray failed to establish and maintain adequate procedures to protect research analysts from conflicts of interest. Despite knowledge of research analysts’ complex responsibilities and conflicts of interest, Piper Jaffray failed to implement a system to detect and insulate its research analysts from improper influence and pressure by investment banking personnel. To the contrary, Piper Jaffray’s business practices motivated research analysts to issue research that would attract and retain investment banking business. By reason of the foregoing, Piper Jaffray violated NASD Conduct Rule 3010(a).

B. Piper Jaffray also consents to the imposition, at a maximum, of the following sanctions:

1. a censure; and
2. a total payment of \$32,500,000, as specified in the Final Judgment ordered in a related action filed by the Securities and Exchange Commission (“Final Judgment”), as follows:
 - a) \$12,500,000, as a fine;
 - b) \$12,500,000, as disgorgement of commissions, fees and other monies; and
 - c) \$7,500,000, to be used for the procurement of Independent Research, as described in Addendum A: Undertakings to the Final Judgment (“Addendum A”).

The monetary sanctions imposed by NASD shall be reduced by the amounts paid by Respondent pursuant to the Final Judgment. Addendum A and the payment provisions of the Final Judgment are incorporated herein by reference.

Respondent agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to payment made pursuant to any insurance policy, with regard to all fine/penalty amounts that Respondent shall pay pursuant to Section II of the Final Judgment, regardless of whether such fine/penalty

amounts or any part thereof are added to the Distribution Fund Account or otherwise used for the benefit of investors. Respondent further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine/penalty amounts that Respondent shall pay pursuant to Section II of the Final Judgment, regardless of whether such fine/penalty amounts or any part thereof are added to the Distribution Fund Account or otherwise used for the benefit of investors. Respondent understands and acknowledges that these provisions are not intended to imply that NASD would agree that any other amounts Respondent shall pay pursuant to the Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any federal, state, or local tax.

The sanctions imposed herein shall be effective on a date set by NASD staff.

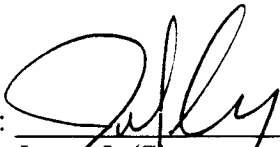
III.

OTHER MATTERS

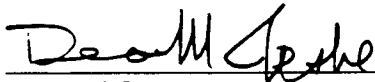
Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. It understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff. Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondent to submit it.

4/21/03
Date

U.S. Bancorp Piper Jaffray Inc.
Respondent

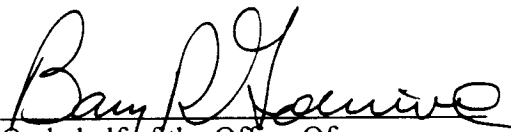
By: 
James L. Chosy
General Counsel

Reviewed by:


Counsel for Respondent
Phillip M. Goldberg, Esq.
Dean M. Jeske, Esq.
Foley & Lardner
321 North Clark Street
Chicago, Illinois 60610

Accepted by NASD:

4/24/03
Date


On behalf of the Office Of
Disciplinary Affairs, Pursuant to
Delegated Authority

Barry R. Goldsmith, Esq.
Executive Vice-President
Enforcement Department
NASD
1801 K Street, NW, Suite 800
Washington, D.C. 20006