

1 STATE OF NORTH DAKOTA
2 SECURITIES DEPARTMENT

3
4 In the matter of

5 THOMAS WEISEL PARTNERS, LLC, ADMINISTRATIVE CONSENT ORDER
6 Respondent.
7

8 WHEREAS, Thomas Weisel Partners, LLC (“TWP”) is a dealer registered in the state
9 of North Dakota; and

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11 WHEREAS, coordinated investigations (the “Investigations”) into TWP’s activities in
12 connection with certain conflicts of interest that research analysts were subject to during the
13 period of approximately July 1999 through 2001 have been conducted by a multi-state task
14 force and a joint task force of the U.S. Securities and Exchange Commission (“SEC”), the
15 New York Stock Exchange (“Exchange”), and the National Association of Securities Dealers
16 (“NASD”) (collectively, the “regulators”); and
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19 WHEREAS, TWP has cooperated with regulators conducting the investigation by
20 responding to inquiries, providing documentary evidence and other materials, and providing
21 regulators with access to facts relating to the investigations; and
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23 WHEREAS, TWP has advised regulators of its agreement to resolve the issues raised
24 in the investigations relating to its research practices; and
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26 WHEREAS, TWP agrees to implement certain changes with respect to its research
27 practices to achieve compliance with all regulations and any undertakings set forth or
28 incorporated herein governing research analysts, and to make certain payments; and

1
2 WHEREAS, TWP, through its execution of this Consent Order, elects to permanently
3 waive any right to a hearing and appeal under N.D.C.C. Chapter 28-32 with respect to this
4 Administrative Consent Order (the "Order");
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6 NOW, THEREFORE, the Securities Commissioner, as administrator of the Securities
7 Department, hereby enters this Order:
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10 **I. JURISDICTION/CONSENT**

11 TWP admits the jurisdiction of the Securities Department, neither admits nor denies
12 the Findings of Fact and Conclusions of Law contained in this Order, and consents to the
13 entry of this Order by the Securities Department.
14

15 **II. FINDINGS OF FACT**

16 **A. Background and Jurisdiction**

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18 1. Thomas Weisel Partners, LLC is a Delaware limited liability company with its
19 headquarters and principal executive offices in San Francisco, California. TWP was
20 formed as Portsmouth Capital LLC in September 1998, and changed its name to
21 Thomas Weisel Partners LLC in February 1999.
22

23 2. TWP is registered with the Securities and Exchange Commission ("Commission"), is a
24 member of the New York Stock Exchange, Inc. ("Exchange") and the NASD Inc.
25 ("NASD") and is licensed to conduct securities business on a nationwide basis.
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1 3. TWP describes itself as a “merchant bank providing investment banking, institutional
2 brokerage, private client services, private equity and asset management exclusively
3 focused on the growth sectors of the economy.” TWP provides a comprehensive range
4 of advisory, financial, securities research, and investment services to corporate and
5 private clients. TWP also provides investment banking services to corporate clients.
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8 4. TWP is currently registered with Securities Department as a dealer, and has been so
9 registered since January 25, 1999.
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12 5. This action concerns the time period of July 1999 through 2001 (the "relevant
13 period"). During that time, TWP engaged in both research and investment banking
14 ("IB") activities.
15

16 **B. Overview**
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18 6. During the relevant period, TWP employed research analysts who provided research
19 coverage of the issuers of publicly traded securities. TWP’s equity research analysts
20 collected financial and other information about a company and its industry, analyzed
21 that information, and developed recommendations and ratings regarding a company’s
22 securities. TWP distributed its research product directly to its own client base. TWP’s
23 research was also distributed through subscription services such as Thomson
24 Financial/First Call, Multex.com, Inc., and Zacks Investment Research (collectively
25 referred to as “Public Services”).
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1 7. From February 1999 to June 1999, TWP maintained a 4-tiered ratings system: Strong
2 Buy, Buy, Watch List, and Sell. In June of 1999, TWP renamed the Sell rating to
3 Underperform. In August 1999, TWP renamed the Watch List rating to Market
4 Perform so that its 4-tiered ratings system was: Strong Buy, Buy, Market Perform, and
5 Underperform. That rating system remained intact until November 2001.
6

7
8 8. TWP ratings were heavily skewed towards "Buy" and "Strong Buy." For example, as
9 of April 13, 2000, TWP covered approximately 230 stocks with 89% being rated either
10 "Buy" or "Strong Buy" (42% were rated "Strong Buy" and 47% were rated "Buy"). In
11 contrast, there was only 1 stock rated "Underperform." As of January 18, 2001, TWP
12 covered approximately 268 stocks, with 80% being rated either "Buy" or "Strong
13 Buy" (31% were rated "Strong Buy" and 49% were rated "Buy"), but none rated
14 "Underperform."
15

16
17 9. As set forth below, written presentations prepared in connection with pitches for initial
18 public offerings ("IPOs") often touted TWP's favorable coverage of other issuers and
19 included research coverage as one of a number of services that TWP would provide in
20 "aftermarket" support of an issuer's stock.
21

22
23 10. Research analysts participated in the pitch process for IPOs, secondary offerings and
24 merger and acquisition work that TWP sought to perform on behalf of publicly-traded
25 clients and potential clients. The analysts involved in the pitch process sometimes
26 included the same analysts who were providing or had provided research coverage of
27 the client or potential clients from whom TWP was seeking investment banking
28 business. In written presentations prepared in connection with these pitches, TWP

1 touted the past research "support" it had provided to its client or potential client, and
2 included charts that tracked its coverage and ratings, and the issuer's stock price.
3

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5 11. TWP analysts considered prospective investment banking business in determining
6 whether to initiate or to continue to provide research coverage for issuers. TWP's
7 investment bankers participated in the evaluation of TWP research analysts, and a
8 portion of the TWP analysts' compensation was tied to the analysts' success in helping
9 TWP generate investment-banking business. TWP failed to disclose any of these facts
10 to its brokerage clients or to the general public.
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12
13 12. TWP received at least one payment from another broker-dealer as consideration for
14 TWP's research coverage of a security. TWP failed to disclose the payment or the
15 amount thereof to its brokerage clients or to the general public.
16

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18 13. On occasion, TWP paid other broker-dealers to initiate or to maintain research
19 coverage with respect to issuers for which TWP acted as an underwriter. The broker-
20 dealers that TWP paid to initiate or to maintain research coverage did not disclose that
21 they had received consideration for their research coverage of the securities.
22

1 C. **TWP'S RESEARCH STRUCTURE CREATED CONFLICTS OF INTEREST**
2 **FOR RESEARCH ANALYSTS**
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5 **Research Analyst Compensation Tied to Investment Banking Revenue**
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7 14. TWP tracked investment banking revenue attributable to research analysts. TWP also
8 tracked to research analysts the brokerage revenue generated from stocks that the
9 analysts covered. During the relevant period, the amount of fees TWP generated from
10 investment banking deals attributed to an analyst accounted for at least five percent of
11 that analyst's overall compensation. Additionally, TWP used the brokerage
12 commission revenue generated in the stocks covered by TWP analysts as a factor in
13 determining analysts' total compensation.
14

15
16 15. During the relevant period, TWP compensated its research analysts both directly and
17 indirectly on the amount of investment banking revenue they helped to generate.
18 Research analysts thus faced a conflict of interest between the incentive to help win
19 investment banking deals for TWP while being under an obligation to conduct and
20 publish objective research regarding those companies.
21

22 **TWP's Investment Bankers Evaluated TWP's Research Analysts and Helped**
23 **Determine the Compensation They Received**
24

25 16. During the relevant period, TWP organized research analysts and investment bankers
26 into "Tiger Teams" along industry groups such as telecommunications and software.
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28

1 Tiger Teams coordinated the efforts of research and investment banking to identify
2 new business opportunities.
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- 4
- 5 17. TWP investment bankers who worked with a TWP research analyst on investment
6 banking deals evaluated the research analyst's performance as part of an annual
7 performance evaluation. That evaluation was considered in setting the analyst's
8 compensation. This input from investment bankers further indicated to research
9 analysts the importance of satisfying the needs of investment bankers and their clients
10 and significantly hampered the independence of research reports that the analysts
11 issued.
12

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14 **TWP Research Analysts Played Important Roles in "Pitches" To Win Investment**
15 **Banking Business, Promised Research Coverage for IPO**
16 **Clients, and Provided Coverage Immediately Following the Quiet Periods**
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- 18 18. During the relevant period, research analysts played a pivotal role in winning
19 investment banking business for TWP. Once TWP's investment banking department
20 decided to compete for a company's investment banking business, particularly for an
21 IPO, research analysts played a critical role in obtaining that business.
22

- 23 19. One of a research analyst's significant responsibilities was to assist in TWP's sales
24 "pitch" where TWP explained to a company or an issuer why it should select TWP to
25 be the lead managing underwriter for the offering or to be a member of an
26 underwriting syndicate. According to TWP's October 2000 equity research job
27 descriptions, vice president-level analysts' duties and responsibilities included
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1 “developing the ability to pitch and win corporate finance mandates.” The job
2 description summary further stated that vice presidents “are building industry-wide
3 relationships that the Firm will monetize via a variety of brokerage and capital market
4 products.”

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

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

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

18
19 Continually develop[ing] and maintain[ing] a Research Franchise
20 that generates \$20-\$30 MM of average annual revenues from
21 multiple revenue streams (Brokerage, Corporate Finance, M&A,
22 Private Equity) . . . [and] position[ing] the Firm to pitch and win
corporate finance mandates including lead managed transactions.

- 23 22. In advocating retention of TWP, research analysts provided material regarding their
24 research to be included in the pitch books presented to the company or issuer. They
25 also routinely appeared with investment bankers at the pitches to help sell TWP
26 services to the potential client. TWP pitch books to potential clients included
27 representations about the role the research analyst would play if TWP obtained the
28 business. In describing the “Role of Research,” the pitch book also provided a

1 roadmap for the amount and type of coverage that the research department would
2 provide. Examples of analysts' participation in the "pitch" process are described
3 below.
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5
6 **Loudcloud**

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

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16 24. TWP's relationship with Loudcloud began in February 2000 when the then chairman
17 and founder of Loudcloud contacted a TWP partner and senior research analyst
18 ("Loudcloud Senior Analyst"). Thereafter, the Loudcloud Senior Analyst and TWP
19 investment bankers met with Loudcloud to discuss potential financing for the
20 company.
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23 25. Prior to Loudcloud's IPO, the Loudcloud Senior Analyst mentioned Loudcloud in a
24 periodic industry report dated June 19, 2000. TWP also invited Loudcloud to attend
25 its annual "Growth Forum" held in late June 2000. Thereafter, TWP solicited
26 underwriting work for Loudcloud's IPO in a presentation made on or about August 16,
27 2000. During the presentation, TWP touted its ability to provide "aftermarket
28 support," which included, in part, research coverage. The presentation provided case

1 studies on two companies that TWP had covered. The case studies highlighted the
2 amount and types of research, i.e., reports specific to the particular company, periodic
3 industry reports, and white papers that TWP provided for these two companies,
4 suggesting that TWP would do the same for Loudcloud. TWP also highlighted the
5 fact that it mentioned Loudcloud in a June 19, 2000 TWP report and that Loudcloud
6 had attended TWP's annual "Growth Forum" conference.
7

8
9 26. The presentation included biographical and professional information about the two
10 TWP analysts who would be covering the company along with a list of companies that
11 they previously and currently covered. The presentation also touted TWP's ability to
12 communicate Loudcloud's "story" through, in part, TWP's "all-star ranked research
13 coverage." In a November 4, 2000, e-mail, the Loudcloud Senior Analyst boasted that
14 "Loudcloud is a deal that I won, I lead [sic] this pitch with [a TWP vice president and
15 junior research analyst]."
16

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18 27. On September 22, 2000 and February 9, 2001, TWP investment bankers and the
19 research analysts who worked on the Loudcloud IPO sent a memorandum to TWP's
20 Commitment Committee in support of TWP's participating in the Loudcloud IPO.
21

22
23 28. On April 3, 2001, after TWP participated as an underwriter in the Loudcloud IPO, the
24 Loudcloud Senior Analyst e-mailed senior Loudcloud management stating:
25 "Gentlemen: this e-mail is to inform you that, as promised during the Thomas Weisel
26 Partners [sic] IPO pitch, I initiated written research coverage on Loudcloud this
27 morning – 25 days (to the hour) following the pricing of the offering on March 8th.
28 Our First Call note we will be posted shortly and our +20 page written research report,

1 that you reviewed this weekend and we discussed changes to yesterday, is being sent
2 to editorial and printing today.” TWP also provided research coverage of Loudcloud
3 in other periodic industry reports or notes during 2001. TWP’s Loudcloud research
4 reports, notes, and other industry publications discussing Loudcloud were distributed
5 through Public Services.

6 **Gemplus**

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8 29. Another example of analyst participation in the pitch process is with respect to
9 Gemplus International, S.A. (“Gemplus”), a French company that provides “smart”
10 cards for wireless communications and transactions. TWP participated as a member of
11 the underwriting syndicate in Gemplus’ U.S. IPO of American Depositary Shares on
12 December 8, 2000, and Gemplus’ stock has since been quoted on the NASDAQ
13 National Market under the ticker symbol GEMP.

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16 30. TWP solicited underwriting work for the Gemplus U.S. IPO in a presentation to
17 company management on or about September 15, 2000. In the presentation, TWP
18 touted its ability to provide research coverage from “multiple angles” through reports
19 specifically related to the company as well as regularly published industry reports
20 highlighting several companies. TWP also presented a case study of research
21 coverage it provided on another company, Verisign, Inc. On a chart depicting
22 Verisign’s trade volume and increasing stock price, TWP highlighted dates upon
23 which TWP published recommendations of Verisign’s stock. In one instance, the
24 presentation states, “12/21/99 TWP upgrades [Verisign] to a strong buy. Stock jumps
25 \$35 in one day,” suggesting that TWP could provide the same sort of coverage and
26 results for Gemplus.
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1 31. A TWP partner and senior research analyst (“Gemplus Senior Analyst”) had
2 previously developed a relationship with Gemplus management and was largely
3 responsible for TWP being selected as an underwriter for Gemplus’ U.S. IPO. A TWP
4 vice-president and junior research analyst (“Gemplus Junior Analyst”) assisted the
5 Gemplus Senior Analyst in his research of the company. According to the lead TWP
6 investment banker on the Gemplus U.S. IPO, Gemplus, in selecting TWP as an
7 underwriter, wanted “to make sure that [the Gemplus Senior Analyst] will be the lead
8 [analyst], with [the Gemplus Junior Analyst] on the deal. . . .”
9

10
11 32. A venture capital firm with whom TWP had a business relationship also played a role
12 in Gemplus awarding TWP with an underwriting slot on the IPO. The venture capital
13 firm, Gemplus’ controlling shareholder, guaranteed TWP a “minimum total fee of \$3
14 million for being a member of the Gemplus underwriting syndicate.”
15

16
17 33. On November 21, 2000, the TWP investment bankers, as well as the TWP research
18 analysts who worked on the Gemplus U.S. IPO, sent a memorandum to TWP’s
19 Commitment Committee in support of TWP’s participation in the Gemplus U.S. IPO.
20 According to this memorandum, the TWP analysts prepared financial models after
21 spending “extensive time with [the lead underwriter] and the company.”
22

23
24 34. On January 3, 2001, the TWP analysts visited the venture capital firm’s San Francisco
25 office and discussed Gemplus, among several items, with two senior partners of the
26 venture capital firm. On January 4, 2001, the Gemplus Junior Analyst e-mailed one of
27 the partners of the venture capital firm, writing that “in keeping w/our commitment to
28 support the [Gemplus] stock, we are initiating research coverage tomorrow, Fri., the

1 first day possible after the 25-day quiet period expires in the States.” The Gemplus
2 Junior Analyst also advised the venture capital firm partner that “we have not yet had
3 an opportunity to speak w/ [the new Gemplus CFO] regarding any
4 substantive/necessary changes to our model and full report.” The Gemplus Junior
5 Analyst continued, “as such, we will publish an abbreviated note in the interim, and
6 would like to set up a conference call as soon as possible to discuss any necessary
7 changes so we can get the full report to our institutional client base.” The Gemplus
8 Junior Analyst attached a copy of TWP’s European version of the Gemplus report to
9 the e-mail and advised that “we will use as the starting point for any new revision.”
10
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12 35. On January 5, 2001, the Gemplus Senior Analyst e-mailed Gemplus’ senior
13 management, as well as partners at the venture capital firm, stating: “Gentlemen: As
14 promised, I am pleased to send you this research note that was transmitted to First Call
15 this morning. This is our launch of research coverage on Gemplus, 25 days to the
16 hour, following the successful company public offering in the U.S. and Europe.” The
17 Gemplus Senior Analyst continued in the e-mail, “we await your final comments on
18 our lengthy written research report that we have already sent you. Following our joint
19 discussions – we will follow through with the publication of the report. Again, it has
20 been a pleasure working with both the Gemplus and [venture capital] management
21 teams. . . We look forward to working together in 2001 and beyond.” In addition to
22 soliciting comments of his research report from Gemplus management, the Gemplus
23 Senior Analyst solicited comments on the report from the controlling shareholder of
24 Gemplus. The Gemplus Senior Analyst published the full research report on January
25 16, 2001.
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1 36. The Gemplus Senior Analyst provided research coverage of the company until August
2 1, 2001. TWP's Gemplus research reports, notes, and other industry publications were
3 distributed through Public Services.
4

5 **Research Department Made Coverage Decisions Based Upon Investment Banking**

6 **Concerns**

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8 37. TWP's equity research department also made coverage decisions based, in part, on
9 investment banking concerns. TWP prepared research "Drop Lists" that detailed the
10 institutional commissions generated by the covered companies, the trading profit and
11 loss, the names of the institutional investors and venture capitalist firms who held
12 stock in the covered companies, and the banker feedback concerning whether to drop
13 research coverage. Explaining a January 2001 version of the research Drop List,
14 TWP's Chief Operating Officer of Investment Banking ("COO of Investment
15 Banking"), e-mailed TWP's Head of Corporate Finance, and TWP's Director of Sales:
16 I've made an attempt to get banking's feedback on potential banking business for each
17 of these clients. We should also assess the potential impact on affiliated venture
18 capitalists for those companies we decide to drop. . . I will be in touch to schedule a
19 meeting for us to review the list in more detail and provide specific recommendations
20 to [TWP's Chief Operating Officer] and [TWP's then acting Director of Research].
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24 38. With regards to the banker feedback section of a February 2001 Drop List, reasons to
25 "keep" research coverage included: "recent IPO," "M&A engagement," "good
26 banking client," "M&A prospects," "multiple fee opportunity," and "potential M&A"
27 Reasons to "hold" coverage included: "waiting for M&A fee (Jan 01)," and a named
28 investor is "considering investing."

1
2 Stamps.com
3

4 39. An example of TWP's decision to drop or effectively to cease research coverage is the
5 case of Stamps.com, Inc., a company that provided Internet postage services.

6 Stamps.com conducted its IPO on June 24, 1999, and its stock has since been quoted
7 on the NASDAQ National Market under the ticker symbol STMP. TWP participated
8 as a member of the underwriting syndicate for the IPO.
9

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11 40. On July 21, 1999, a TWP partner and senior research analyst ("Stamps.com Senior
12 Analyst") initiated research coverage on Stamps.com with a "Buy" rating. TWP
13 continued its research coverage of Stamps.com in reports it issued during 1999 and
14 2000. TWP also issued other periodic industry reports or notes mentioning
15 Stamps.com during the relevant period. TWP's Stamps.com research reports, notes,
16 and other industry publications discussing Stamps.com were distributed through Public
17 Services.
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19
20 41. The Stamps.com Senior Analyst maintained a "Buy" rating on Stamps.com until
21 October 29, 1999, the last date on which he issued a research note on the company.
22 On December 6, 1999, Stamps.com conducted a secondary offering. TWP was again a
23 member of the underwriting syndicate for that offering.
24

25
26 42. In late 1999, TWP transitioned research coverage on the company from the
27 Stamps.com Senior Analyst to a TWP vice president and junior research analyst
28 ("Stamps.com Junior Analyst"). On January 29, 2000, the Stamps.com Junior Analyst

1 initiated research coverage with a "Buy" rating. On February 7, 2000, Stamps.com
2 acquired another company and TWP provided Stamps.com with a fairness opinion
3 regarding the acquisition.
4

5
6 43. The Stamps.com Junior Analyst maintained his "Buy" rating on Stamps.com until
7 September 19, 2000 when he ceased publishing any additional research on the
8 company. During the time period that he actively covered the company, the
9 Stamps.com Junior Analyst maintained a "Buy" rating on Stamps.com despite the
10 steady decline of the company's stock price from \$35.12 on January 27, 2000 to \$6.00
11 on September 19, 2000.
12

13
14 44. On November 27, 2000, the Stamps.com Junior Analyst e-mailed a TWP partner and
15 Director of East Coast Research (in December 2000, this TWP partner became the
16 acting Director of Research) explaining reasons why TWP should "kill," or
17 discontinue, research coverage on Stamps.com. The Stamps.com Junior Analyst
18 explained that: (1) Stamps.com was not "core" to the companies he was then covering;
19 (2) there was "no more [investment] banking [business] to be done"; and (3) that there
20 was "limited commission opportunity" as a market maker in Stamps.com's stock.
21

22
23 45. With regard to the lack of additional investment banking business, the Stamps.com
24 Junior Analyst explained in more detail that: (1) TWP had been paid for the
25 Stamps.com IPO, a follow-on offering, and a fairness opinion for a merger; (2)
26 Stamps.com had retained another investment banking firm to review the company's
27 strategic options; and (3) contrary to his earlier belief, a Stamps.com wholly-owned
28 subsidiary was unlikely to do a 2001 IPO.

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2
3 46. The Stamps.com Junior Analyst also explained the “sensitivities” associated with
4 dropping coverage. Those “sensitivities” included the fact that certain venture
5 capitalists, who were also TWP clients, had investments in Stamps.com. He advised
6 his supervisor that one venture capital firm “is a big [institutional] client and has
7 owned all the way down.” Despite these “sensitivities,” the Stamps.com Junior
8 Analyst pointed out to his supervisor that the venture capitalists “hired [another
9 investment banking firm] not us for potential M&A trade” and that there would be
10 “limited downside on [Stamps.com] stock from cutting research sponsorship.”
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12
13 47. On January 8, 2001, the acting Director of Research, responded to the Stamps.com
14 Junior Analyst’s November 27, 2000 e-mail with a number of edits and instructions to
15 send the e-mail to other senior managers of TWP’s Sales and Trading Department,
16 Private Client Department, and Corporate Finance for their “reactions” to the
17 Stamps.com Junior Analyst’s recommendation. Senior TWP management did not
18 object to dropping research coverage on Stamps.com and, in response to the
19 Stamps.com Junior Analyst’s e-mail, the head of TWP Corporate Finance advised the
20 Stamps.com Junior Analyst to “drop” coverage on Stamps.com. However, on January
21 12, 2001, TWP’s COO of Investment Banking e-mailed the Stamps.com Junior
22 Analyst advising him that the head of the firm wanted him to “hold on to this stock for
23 now” but that he “shouldn’t feel that [he had] to do any work on it, just don’t drop it.”
24 The COO of Investment Banking further explained that TWP had a number of venture
25 capitalist backed stocks in the Stamps.com sector and that the head of the firm “wants
26 to manage this relationship carefully.”
27
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1 48. The Stamps.com Junior Analyst did not publish any research on Stamps.com after its
2 last note on September 19, 2000. However, TWP never issued a note that it was
3 dropping coverage on Stamps.com.
4

5 Verisign

6 49. Verisign, Inc. is a provider of digital trust services that enable businesses and
7 consumers to engage in commerce and communications. Verisign's IPO was on
8 January 29, 1998, and its stock has since been quoted on the NASDAQ National
9 Market under the ticker symbol VRSN. TWP did not participate in the underwriting
10 of this IPO.
11

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13 50. On June 25, 1999, TWP, through a research report issued by a TWP partner and senior
14 research analyst ("Verisign Senior Analyst"), initiated research coverage on Verisign
15 with a "Buy" rating. TWP continued research coverage of Verisign in reports issued
16 during the relevant period. TWP also featured Verisign in other periodic industry
17 reports or notes during the relevant period. TWP's Verisign research reports, notes,
18 and other industry publications discussing Verisign were distributed through Public
19 Services.
20

21
22 51. In November 1999, TWP transitioned coverage of Verisign from the Verisign Senior
23 Analyst to a TWP vice president and junior research analyst ("Verisign Junior
24 Analyst"). The Verisign Junior Analyst maintained the "Buy" rating on Verisign until
25 December 21, 1999, when he upgraded his rating to a "Strong Buy." He maintained
26 that rating until January 25, 2001, when he downgraded Verisign's rating to a "Buy."
27 After the Verisign Junior Analyst advised Verisign's CEO that he was downgrading
28 the stock, the Verisign CEO called a TWP partner and demanded that TWP fire the

1 Verisign Junior Analyst. On February 2, 2001, TWP terminated the Verisign Junior
2 Analyst, along with a number of other research analysts, and transitioned Verisign
3 coverage.
4

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

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16 53. The Verisign Senior Analyst and TWP investment bankers prepared a pitch
17 presentation for Verisign management. On May 29, 2001, the Verisign Senior Analyst
18 and TWP investment bankers drove to Verisign's offices in Silicon Valley and made
19 an investment banking pitch to the company's management. The pitch book prepared
20 for the May 29, 2001 presentation touted TWP's research role as a "strong supporter
21 of Verisign's story," and the Verisign Senior Analyst's recent upgrade of the stock to a
22 "Strong Buy."
23

24
25 54. The Verisign Senior Analyst continuously covered Verisign from April 16, 2001 to
26 September 10, 2001, despite his participation in TWP's pitch to Verisign for
27 investment banking business. TWP transitioned research coverage of Verisign on
28

1 October 26, 2001, from the Verisign Senior Analyst to another analyst who then
2 initiated coverage with a "Buy" rating.
3

4
5 **D. TWP ISSUED RESEARCH REPORTS ON THREE COMPANIES THAT**
6 **WERE NOT BASED ON PRINCIPLES OF FAIR DEALING AND GOOD**
7 **FAITH AND DID NOT PROVIDE A SOUND BASIS FOR EVALUATING**
8 **FACTS, CONTAINED EXAGGERATED OR UNWARRANTED CLAIMS**
9 **ABOUT THESE ISSUERS, AND/OR CONTAINED OPINIONS FOR WHICH**
10 **THERE WAS NO REASONABLE BASIS**

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12 **InfoSpace**

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14 55. InfoSpace, Inc., is a diversified technology and services company. TWP was an
15 underwriter for InfoSpace's March 30, 1999 secondary offering. On April 1, 1999, a
16 TWP partner initiated coverage of InfoSpace with a "Buy" rating. TWP maintained its
17 "Buy" rating on InfoSpace through December 7, 1999. Shortly thereafter, TWP
18 transitioned coverage of InfoSpace from a TWP partner to a vice president and junior
19 research analyst ("InfoSpace Research Analyst"). InfoSpace's stock trades on the
20 NASDAQ National Market under the ticker symbol INSP.
21

22
23 56. In January 2000, the InfoSpace Research Analyst initiated his coverage on InfoSpace
24 with a "Buy" rating, which he maintained until he lowered it to "Market Perform" in
25 July 2001. During that time, the price of InfoSpace's stock declined from \$43 to about
26 \$2. Despite his "Buy" rating, as early as January 2001 and continuing over the next
27 four months, the InfoSpace Research Analyst had serious doubts about InfoSpace's
28

1 business prospects and was privately telling others that the stock was not a buy and to
2 "get out of" InfoSpace.
3
4

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

15
16 58. The InfoSpace Research Analyst privately e-mailed others explaining that he did not
17 think the stock should be rated a "Buy." For example, on January 22, 2001, the
18 InfoSpace Research Analyst explained to a TWP salesperson: "I can't frickin believe
19 that I still have [InfoSpace] as a buy rating. I need a drink." In an e-mail later that
20 same day to a TWP research associate who was working with him, the InfoSpace
21 Research Analyst explained:
22

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

26 59. Within minutes of sending this e-mail to his assistant, the InfoSpace Research Analyst
27 e-mailed TWP's Head of the Product Management Group, TWP's Director of Sales
28 and TWP's acting Director of the Research Department about changes in InfoSpace's

1 management which indicated to the InfoSpace Research Analyst that the company's
2 ability to execute a wireless plan was "probably diminishing." The InfoSpace
3 Research Analyst further explained that the:

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

8
9 60. Later that same day, the InfoSpace Research Analyst, responding to some of the acting
10 Director of Research's questions, stated:

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

17
18 61. On January 23, 2001, the InfoSpace Research Analyst sent a draft copy of a new
19 research note with a "Buy" rating on InfoSpace to a supervisory analyst for review.
20 The Draft research note stated, in part: "we recommend that investors remain cautious
21 on the stock. . . ." The supervisory analyst e-mailed the InfoSpace Research Analyst,
22 stating "we cannot tell investors to 'remain cautious' on a BUY-rated stock." The
23 InfoSpace Research Analyst edited the note and deleted the "remain cautious"
24 language as the supervisory analyst suggested and TWP published the note that day.

25
26 62. Later in the morning on January 23, the InfoSpace Research Analyst sent e-mails to a
27 number of people explaining that he should have downgraded the stock. He first e-
28 mailed his assistant, explaining: "I saw that some people downgraded INSP this
morning . . . I want the stock to increase before we downgrade." The InfoSpace

1 Research Analyst next explained to TWP's head of sales: "I never did the downgrade.
2 I missed it weeks ago. Wanted to speak with mgmt first . . . also I'm hoping shares
3 rebound over the next few weeks. . . then I'll downgrade." The InfoSpace Research
4 Analyst also e-mailed a TWP investment banker: "Yea. I should have downgraded
5 INSP last night. I want to have a call with [InfoSpace's CEO] and tell him I'm going to
6 do it before I do it."
7
8

9 63. From January 29 through February 13, 2001, the InfoSpace Research Analyst
10 continued privately to tell the sales and trading departments, and investors with whom
11 he spoke, that he recommended swapping out of InfoSpace and into Openwave. For
12 example, on January 29, the InfoSpace Research Analyst, in an e-mail intended for
13 TWP internal use only, wrote to the sales and trading departments that InfoSpace's
14 "2001 guidance will be negative. Swap into Openwave." That same morning, the
15 InfoSpace Research Analyst also e-mailed TWP's head of product management,
16 asking him to mention during the morning call with the sales and trading departments
17 that investors should swap out of InfoSpace and into Openwave.
18
19

20 64. While privately telling TWP sales and trading personnel and investors with whom he
21 spoke to swap out of InfoSpace, the InfoSpace Research Analyst nonetheless
22 published yet another company research note on January 30, 2001 with a "Buy" rating.
23 Later that morning, the TWP InfoSpace Research Analyst responded as follows to an
24 e-mail from an individual at another broker-dealer that noted another broker-dealer
25 was cutting its earnings per share estimates on InfoSpace: "We did the same.
26 Although I still think that '01 numbers are complete bull-shit. . . ."
27
28

1 65. On February 5, 7, and 11, 2001, the TWP InfoSpace Research Analyst again sent e-
2 mails to TWP's sales and trading departments, stating in part: (1) "Swap from INSP to
3 [Openwave]"; (2) "We believe accounts should wait on the sidelines until the
4 company gives greater clarity on its revised strategic plan"; and (3) "we are still
5 adopting a wait and see attitude until we gain greater confidence that the company will
6 successfully manage the transition from its consumer services business." Despite his
7 private comments to the contrary, on February 13, 2001, the InfoSpace Research
8 Analyst issued a research note in which he reiterated his "Buy" rating.
9

10
11 66. From February 13, 2001 to April 25, 2001, the InfoSpace Research Analyst did not
12 issue any new research reports or notes on InfoSpace, and the stock price declined
13 more than 20%, from \$5.00 to \$3.91. On April 25, the InfoSpace Research Analyst e-
14 mailed the Deputy Director of Research (on April 16, 2001, a new Director of
15 Research began working at TWP and the acting Director of Research became the
16 Deputy Director of Research), explaining:
17

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

22 67. The Deputy Director of Research responded to the InfoSpace Research Analyst and
23 asked in part, "What are our commissions in INSP? What is it's [sic]current market
24 cap?" The Deputy Director of Research also told the InfoSpace Research Analyst that
25 he would run the potential drop in coverage by other TWP department directors to
26 "build a consensus course of action." The InfoSpace Research Analyst responded to
27 the Deputy Director of Research explaining that TWP's commissions were:
28

1 \$145k to-date (\$140 in jan/feb) when we told people to swap into
2 [the InfoSpace competitor]. We have very strong relationships [a
3 TWP partner and senior research analyst and InfoSpace's CEO]. . .
4 but I do not get the sense that the bankers care anymore.
5 Maintaining coverage in [short term] is not a big problem since I've
6 got the quarterly report 'automated' . . . thanks.

7 68. The Deputy Director of Research e-mailed a number of TWP department directors and
8 other research analysts to ascertain if they had any problem with dropping research
9 coverage or whether other analysts wanted to pick up coverage of InfoSpace. The
10 other TWP department directors did not object to dropping coverage and none of the
11 other TWP research analysts wanted to pick up coverage of InfoSpace. On April 26,
12 2001, the InfoSpace Research Analyst issued another research note on InfoSpace and
13 reiterated his "Buy" rating on the company.

14
15
16 69. On May 2, 2001, the Deputy Director of Research e-mailed the InfoSpace Research
17 Analyst as follows:

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

25
26 70. On May 30, 2001, the InfoSpace Research Analyst, apparently responding to an e-mail
27 from another one of his assistants, stated: "I agree re: INSP. I hate having it as a buy,
28 but nothing I can do now . . ." The InfoSpace Research Analyst maintained his
"Buy" rating on InfoSpace until July 25, 2001 when he finally downgraded the stock
to a "Market Perform" rating. He published his last research note on InfoSpace on

1 November 26, 2001, again with a “Market Perform” rating. In this report, the
2 InfoSpace Research Analyst also explained that he was discontinuing his research
3 coverage of InfoSpace.
4

5
6 **Level 3 Communications**

- 7 71. Level 3 Communications, Inc. is a telecommunications and information services
8 company that operates an advanced international facilities-based communications
9 network based on Internet Protocol technology. Level 3’s stock trades on the
10 NASDAQ National Market under the ticker symbol LVLT.
11
- 12
13 72. TWP commenced its research coverage of Level 3 with a “Buy” rating and a year-end
14 \$100 price target on September 15, 2000, when the stock opened at \$78.25 per share.
15 TWP maintained its “Buy” rating on Level 3 even as the stock price declined from
16 \$78.25 per share to \$5.97 per share on June 18, 2001. Not until June 19, 2001 did
17 TWP downgrade its rating of Level 3 to “Market Perform.” TWP continued to cover
18 Level 3 until October 26, 2001, when it discontinued coverage. TWP re-initiated
19 coverage on Level 3 on January 20, 2004.
20
- 21
22 73. On May 21, 2001, when TWP rated Level 3 a “Buy” and its shares were trading at
23 \$13.06, another firm covering Level 3 lowered its rating from “Strong Buy” to
24 “Market Underperform.” TWP’s Deputy Director of Research, who was aware of the
25 downgrade, e-mailed the TWP vice president and research analyst covering the stock
26 (“Level 3 Analyst”) about the “Buy” rating stating: “doesn’t sound like a buy.” In a
27 series of e-mails that day, the Level 3 Analyst responded to the inquiries concerning
28

1 the "Buy" rating and explained that he wanted to delay the downgrade to ensure that
2 Level 3 executives attended a conference that TWP sponsored:

3
4 • It isn't [a buy]. I'm waiting until after the conference [TWP's
5 annual "Growth Forum" conference], and before the next quarter to
6 downgrade. If we do it now it won't look as aggressive as if we do it
7 in front of their quarter. So we'll probably downgrade around the
8 beginning of July. The stock isn't going to make a significant move
9 until then. We expect it will probably trade in the mid-teens. We're
10 expecting the stock to move down into single digits after another
11 "average" quarter, and possible downward revision in estimates.

12
13 • There is also the issue of wanting to ensure that they come to
14 our conference and speak on our panel. If I downgrade right now
15 they will assuredly pull from our conference and we can't afford
16 that.

17
18 • We have always maintained the stock is a speculative buy.
19 We've been very clear that there were issues on this name, but that
20 as long as you knew what you were getting into it was a good stock
21 to trade. Just recently it has become very clear that the company [is]
22 settling into a single market company, and the issues haven't gone
23 away. In my commentary to the clients I am positioning it as a name
24 that they can still trade, but one that will probably see a downward
25 trend before a significant upward movement.

26
27 74. On May 31, 2001, in response to an e-mail from TWP's Director of Communications
28 Services Research advising that he had just had a conversation with a firm that was
"very negative on level3," the Level 3 Analyst stated:

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

1 75. Despite the Level 3 Analyst's view of the company expressed in the May 21 and 31,
2 2001, e-mails, he maintained his "Buy" rating in the stock for almost another month,
3 until he finally downgraded the stock to "Market Perform" on June 19, 2001.
4

5 **Sprint FON Group**
6

7
8 76. Sprint FON Group is comprised of Sprint's wireline telecommunications operations,
9 including long distance, local phone, product distribution and directory publishing.
10 Sprint FON Group's stock trades on the NYSE under the ticker symbol FON.
11

12 77. On June 13, 2001, before initiation of coverage and the announcement of a rating, the
13 TWP vice president and junior research analyst assigned to cover the stock ("FON
14 Research Analyst") attended a meeting at FON's headquarters with members of the
15 FON management. Following this meeting, the FON Research Analyst e-mailed the
16 Director of Communications Services Research, stating:
17

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

25 78. On June 19, 2001, TWP initiated coverage of FON with a "Buy" rating. In that report,
26 TWP did not disclose that one reason that it had made a "Buy" recommendation was
27 the fact that TWP hoped to obtain investment banking business from Sprint.
28

1 E. TWP RECEIVED PAYMENT IN CONSIDERATION OF ITS PROVIDING
2 RESEARCH COVERAGE OF HOTJOBS.COM
3

4 79. Between 1999 and 2001, TWP received payment from the proceeds of at least one
5 underwriting to compensate the firm for services that included publishing research on
6 the issuer. Despite having an obligation to do so, TWP failed to disclose in research
7 reports or elsewhere that it received the payment, in part, as compensation for issuing
8 the reports.
9

10
11 80. In August 1999, Hotjobs.com, Ltd., conducted an IPO for which another broker-dealer
12 acted as lead underwriter. TWP was not included in the syndicate for the Hotjobs IPO.
13 Although not a member of the original syndicate, TWP did act as an underwriter for a
14 Hotjobs.com secondary offering that took place on November 10, 1999.
15

16
17 81. In connection with the Hotjobs IPO, the lead underwriter for the Hotjobs IPO made a
18 payment of \$40,000 to TWP by a check dated November 4, 1999. The lead
19 underwriter's records concerning the IPO indicate that the lead underwriter made the
20 payment in settlement of a "guaranteed" selling concession to be paid in either stock or
21 cash. The lead underwriter's records indicate that it guaranteed the selling concession
22 to TWP in consideration of the fact that "[a TWP research partner] will pick up
23 research." TWP did not disclose or cause to be disclosed the fact of this payment.
24

25
26 82. On September 9, 1999, TWP, through a research report issued by the TWP research
27 partner, initiated research coverage on Hotjobs.com with a "Buy" rating. TWP
28

1 continued its research coverage concerning Hotjobs.com in reports it issued during
2 1999 and 2000. TWP upgraded Hotjobs.com to a "Strong Buy" on February 16, 2000.

3
4
5 83. TWP also provided research coverage to Hotjobs.com in other publications during
6 1999 and 2000. TWP's Hotjobs.com research reports, notes, and other publications
7 were distributed through Public Services.

8
9 84. TWP did not disclose that it had received consideration, or the amount thereof, for its
10 research or other publications concerning Hotjobs.com in any of its publications
11 concerning Hotjobs.com.
12

13
14 **F. TWP FAILED TO ENSURE PUBLIC DISCLOSURE OF PAYMENTS IT**
15 **MADE FROM THE PROCEEDS OF UNDERWRITINGS TO BROKERAGE**
16 **FIRMS TO ISSUE RESEARCH COVERAGE REGARDING ITS**
17 **INVESTMENT BANKING CLIENTS**
18

19 85. During the relevant period, TWP paid portions of certain underwriting proceeds to
20 other brokerage firms to initiate or continue research coverage on issuers for whom
21 TWP served as lead or co-manager. TWP knew that these payments were, in part, for
22 research. TWP did not take steps to ensure that the brokerage firms it paid to initiate
23 or continue coverage of its investment banking clients disclosed that they had been
24 paid to issue such research. Further, TWP did not disclose or cause to be disclosed in
25 offering documents or elsewhere the fact of or reason for such payments.
26
27
28

1 **Arena Pharmaceuticals**

2

3 86. In June 2001, TWP acted as lead underwriter for a secondary offering of securities by

4 Arena Pharmaceuticals, Inc. In connection with that underwriting, TWP made

5 payments totaling \$325,000 to three broker-dealers in consideration of their providing

6 research coverage of Arena Pharmaceuticals stock. The check stub for each of the

7 payments described the payment as "Research Fees for Arena Pharmac." TWP did not

8 ensure these payments were disclosed to the public by the broker-dealers in their

9 published reports on Arena Pharmaceuticals.

10

11

12 **Proxicom**

13

14 87. In October 1999, TWP acted as lead underwriter for a secondary offering of securities

15 by Proxicom, Inc. In connection with that underwriting, TWP made payments totaling

16 \$50,000 to two firms in consideration of those firms providing research coverage

17 concerning Proxicom securities. The check stub for each of those payments indicated

18 that the check was in consideration of "Research Proxicom." TWP did not ensure

19 these payments were disclosed to the public by the broker-dealers in their published

20 reports on Proxicom. TWP included another \$25,000 for payment to a third firm in its

21 expense budget for the Proxicom underwriting syndicate. However, TWP did not pay

22 that firm. TWP's accounting records indicate the payment was "held" until that firm

23 "start[ed] research coverage."

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

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

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III. CONCLUSIONS OF LAW

1. The Securities Department has jurisdiction over this matter pursuant to the Securities Act of 1951 [N.D.C.C. Chapter 10-04].
2. The Securities Commissioner finds the following relief appropriate and in the public interest.
3. The Securities Commissioner finds that, based on the facts set forth above, TWP:
 - i. Failed to reasonably supervise its employees to ensure that its analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking, as required by Section 10-04-11(1)(m) N.D.C.C.
 - ii. Failed to ensure that analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking. This activity was a dishonest and unethical practice prohibited by Section 10-04-11(1)(c) N.D.C.C.
4. The practices described above involved numerous investors and the effects of those practices may have been curtailed had investors been more knowledgeable about financial concepts and procedures relating to the securities industry.
5. Nothing in this Order shall be construed as an admission or finding of fraud.

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IV. ORDER

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

IT IS HEREBY ORDERED:

1. This Order concludes the Investigations by the Securities Department and any other action that the Securities Department could commence under the Securities Act on behalf of the state of North Dakota as it relates to TWP, or its affiliates, or the current or former directors, officers or employees of TWP or its affiliates arising from or relating to the subject of the Investigations, provided however, that excluded from and not covered by this paragraph 1 are any claims by the Securities Department arising from or relating to enforcement of the "Order" provisions contained herein.
2. TWP will CEASE AND DESIST from engaging in acts in violation of the Securities Act in connection with the research practices referenced in this Order and will comply with the Securities Act in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.
3. If payment is not made by TWP or if TWP defaults in any of its obligations set forth in this Order, the Securities Department may vacate this Order, at its sole discretion, upon 10 days notice to TWP and without opportunity for administrative hearing and TWP agrees that any statute of limitations applicable to the subject of the Investigation

1 and any claims arising from or relating thereto are tolled from and after the date of this
2 Order.

3
4 4. This Order is not intended by the Securities Department to subject any Covered
5 Person to any disqualifications under the laws of any state, the District of Columbia or
6 Puerto Rico (collectively, "State"), including, without limitation, any disqualifications
7 from relying upon the State registration exemptions or State safe harbor provisions.
8 "Covered Person" means TWP, or any of its officers, directors, affiliates, current or
9 former employees, or other persons that would otherwise be disqualified as a result of
10 the Orders (as defined below).
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13 5. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of
14 Acceptance, Waiver and Consent, this Order and the order of any other State in related
15 proceedings against TWP (collectively, the "Orders") shall not disqualify any Covered
16 Person from any business that they otherwise are qualified, licensed or permitted to
17 perform under applicable law of North Dakota and any disqualifications from relying
18 upon this state's registration exemptions or safe harbor provisions that arise from the
19 Orders are hereby waived.
20

21
22 6. For any person or entity not a party to this Order, this Order does not limit or create
23 any private rights or remedies against TWP including, without limitation, the use of
24 any e-mails or other documents of TWP or of others regarding research practices or
25 limit or create liability of TWP or limit or create defenses of TWP to any claims.
26

27
28 7. Nothing herein shall preclude the state of North Dakota, its departments, agencies,
boards, commissions, authorities, political subdivisions and corporations, other than

1 the Securities Department and only to the extent set forth in paragraph 1 above,
2 (collectively, "State Entities") and the officers, agents or employees of State Entities
3 from asserting any claims, causes of action, or applications for compensatory, nominal
4 and/or punitive damages, administrative, civil, criminal, or injunctive relief against
5 TWP in connection with certain research and/or banking practices at TWP.
6

7
8 8. TWP agrees not to take any action or to make or permit to be made any public
9 statement denying, directly or indirectly, any finding in this Order or creating the
10 impression that this Order is without factual basis. Nothing in this paragraph affects
11 TWP's: (i) testimonial obligations, or (ii) right to take factual or legal positions in
12 defense of litigation or in defense of other legal proceedings in which the Securities
13 Department is not a party.
14

15 9. This Order shall be binding upon TWP and its successors and assigns. Further, with
16 respect to all conduct subject to Paragraph 2 above and all future obligations,
17 responsibilities, undertakings, commitments, limitations, restrictions, events, and
18 conditions, the terms "TWP" and "TWP's" as used herein shall include TWP's
19 successors and assigns (which, for these purposes, shall include a successor or assign
20 to TWP's investment banking and research operations, and in the case of an affiliate of
21 TWP, a successor or assign to TWP's investment banking or research operations).
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2 **V. MONETARY SANCTIONS**
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4 IT IS FURTHER ORDERED, that:
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6 As a result of the Findings of Fact and Conclusions of Law contained in this Order,
7 TWP shall pay a total amount of Twelve million dollars five hundred thousand dollars
8 (\$12,500,000). This total amount shall be paid as specified in the SEC Final Judgment as
9 follows:
10

- 11 1. Five million dollars (\$5,000,000) to the states (50 states, plus the District of Columbia
12 and Puerto Rico) (TWP's offer to the state securities regulators hereinafter shall be
13 called the "state settlement offer"). Upon execution of this Order, TWP shall pay the
14 sum of \$50,000 of this amount to the Securities Department, which shall be designated
15 as a donation to the Investor Education and Technology Fund administered by the
16 Securities Commissioner, pursuant to Section 10-04-03 N.D.C.C. The total amount to
17 be paid by TWP to state securities regulators pursuant to the state settlement offer may
18 be reduced due to the decision of any state securities regulator not to accept the state
19 settlement offer. In the event another state securities regulator determines not to
20 accept TWP's state settlement offer, the total amount of the North Dakota payments
21 shall not be affected, and shall remain at \$50,000.
22
- 23 2. Five million dollars (\$5,000,000) as disgorgement of commissions and other monies as
24 specified in the SEC Final Judgment;
25
- 26 3. Two million dollars five hundred thousand dollars (\$2,500,000) to be used for the
27 procurement of independent research, as described in the SEC Final Judgment;
28

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

7 TWP further agrees that it shall not claim, assert, or apply for a tax deduction or tax
8 credit with regard to any state, federal or local tax for any penalty amounts that TWP shall
9 pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether
10 such penalty amounts or any part thereof are added to the Distribution Fund Account referred
11 to in the SEC Final Judgment or otherwise used for the benefit of investors. TWP
12 understands and acknowledges that these provisions are not intended to imply that the
13 Securities Department would agree that any other amounts TWP shall pay pursuant to the
14 SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an insurance
15 policy or otherwise) under applicable law or may be the basis for any tax deduction or tax
16 credit with regard to any state, federal or local tax.

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2 **VI. GENERAL PROVISIONS**
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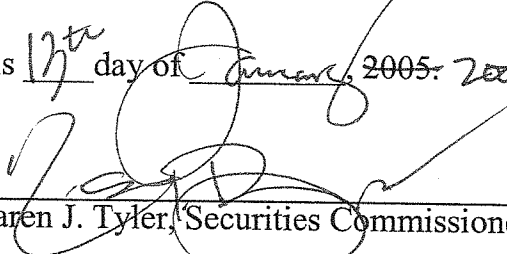
4 This Order and any dispute related thereto shall be construed and enforced in
5 accordance with, and governed by, the laws of North Dakota without regard to any choice of
6 law principles. The parties represent, warrant and agree that they have received independent
7 legal advice from their attorneys with respect to the advisability of executing this Order.

8 TWP enters into this Consent Order voluntarily and represents that no threats, offers,
9 promises, or inducements of any kind have been made by the Securities Department or any
10 member, officer, employee, agent, or representative of the Securities Department to induce
11 TWP to enter into this Consent Order.

12 This Consent Order shall become final upon entry.

13
14 Dated this 17th day of January, 2005. 2006

15
16 By:



17 Karen J. Tyler, Securities Commissioner

18 North Dakota Securities Department
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**CONSENT TO ENTRY OF
ADMINISTRATIVE ORDER BY TWP**

1. TWP hereby acknowledges that it has been served with a copy of this Administrative Order, has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.
2. TWP admits the jurisdiction of the Securities Department, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Securities Department as settlement of the issues contained in this Order.
3. TWP states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily.
4. TWP understands that the Securities Department may make such public announcement concerning this agreement and the subject matter thereof as the Securities Department may deem appropriate.

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

Dated this 22 day of December, 2005

Thomas Weisel Partners, LLC

By: David Baylor

Title: CAO

SUBSCRIBED AND SWORN TO before me this 22nd day of December, 2005.

Fredericka S. Drum

Notary Public

My Commission expires: 9/30/07

