

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of US Bancorp Piper)
Jaffray, Inc. and Christopher Birmingham)
Respondents.)

ORDER, NOTICE OF PENALTIES,
ASSESSMENT OF INVESTIGATIVE
COSTS, AND NOTICE OF RIGHT
TO REQUEST A HEARING

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**THE SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA TO
US BANCORP PIPER JAFFRAY, INC. AND CHRISTOPHER BIRMINGHAM:**

The North Dakota Securities Commissioner has a reasonable basis to believe that the Respondents have engaged in acts, practices and transactions, as more fully described below, which are prohibited under Chapter 10-04 of the North Dakota Century Code (N.D.C.C.). It is necessary and appropriate in the public interest and for the protection of investors to restrain and penalize these acts, practices, or transactions of the Respondents.

1. Respondent, US Bancorp Piper Jaffray, Inc. (US Bancorp) is a Minnesota based broker/dealer, which, for all times relevant to this matter, was registered in the state of North Dakota. Respondent, Christopher Birmingham, is, and for all times relevant to this matter, has been a North Dakota registered agent of US Bancorp.

2. In June of 1992, Birmingham sold a variable annuity product, issued by the Hartford Life Insurance Co., (Hartford), to Magdalen Stricker, a North Dakota resident. At the time of the transaction, Ms. Stricker was a 78-year old widow that had no previous investment experience. Ms. Stricker expressed an interest in receiving income from the investment, and did receive a monthly distribution from the annuity. The annuity was sold as a long-

term investment and carried with it penalties, in the form of a contingent deferred sales charge (CDSC), for early withdrawal.

3. In July of 1998, Birmingham approached Ms. Stricker, then 84 years of age, and recommended that she sell the annuity and purchase other securities. Birmingham stated that completing the transaction would allow Ms. Stricker to have higher income. Ms. Stricker's annuity had grown significantly in tax-deferred value, which would be realized as income in the event of the sale. Additionally, a contingent deferred sales charge of 1% of the initial investment would be charged for any sale of the annuity prior to June of 1999. Mr. Birmingham did not inform Ms. Stricker that she would pay a sales charge and that she would have significant tax consequences from the sale.

4. Based on Birmingham's recommendations, Ms. Stricker sold the annuity and purchased different securities. The sale of the annuity and subsequent transactions were not suitable based on the investment objectives and risk temperament of Ms. Stricker.

5. Mr. Birmingham did not provide Ms. Stricker with all of the relevant information regarding the sale of the annuity and subsequent transactions, and was deceptive in making the recommendation in that Birmingham suggested that the sale of the annuity and subsequent transactions would permit her to receive higher income than she could have received through the annuity.

6. US Bancorp failed to properly supervise Birmingham in permitting the sale of the annuity and subsequent transactions without any additional review of or contact with Ms. Stricker. US Bancorp did not seek an explanation of the transaction from Birmingham, nor did it contact Ms. Stricker to ensure that she understood the implications of the sale of the annuity and subsequent transactions.

LEGAL CONCLUSIONS

Based on the facts set forth above, the sale of the annuity and the subsequent transactions were made in violation of several provisions of the North Dakota Securities Act as detailed below:

1. Birmingham's recommendation to sell the annuity and purchase additional securities was an unsuitable recommendation in violation of rule 2310 of the NASD rules of conduct (formerly known as the NASD rules of fair practice). Violation of any NASD rules and making unsuitable recommendations are "unethical or deceptive" as those terms are defined by section 73-02-09-03 N.D.A.C. Under section 10-04-10.1(1) N.D.C.C., it is unlawful for any who received compensation for advising persons of the purchase or sale of securities to engage in any unethical or deceptive practices. In making the unsuitable recommendation, Birmingham violated this section.
2. Birmingham omitted several material facts in recommending the sale of the annuity and subsequent transactions in that he did not discuss the tax consequences or the CDSC, and Mr. Birmingham suggested that Ms. Stricker could get higher income from these investments than from the annuity. Such statements were made in violation of section 10-04-10.1(1) N.D.C.C. and section 10-04-15(2) N.D.C.C.
3. US Bancorp failed to reasonably supervise its agent by permitting Mr. Birmingham to violate the law as set forth above and to permit the sale of the annuity and subsequent transactions. Pursuant to section 10-04-11(1) N.D.C.C., this activity is sufficient grounds for the Commissioner to censure, place limitations upon, suspend or revoke the registration of US Bancorp as a dealer in North Dakota.

NOTICE OF PENALTIES

YOU ARE NOTIFIED that the above-cited violations are sufficient grounds for the imposition of civil penalties pursuant to §10-04-16(1) N.D.C.C. The Securities Commissioner herein assesses a civil penalty against the respondents in the amount of **\$20,000** based on the violations outlined above. Additionally, US Bancorp is hereby Censured pursuant to the authority of section 10-04-11(1) N.D.C.C.

ASSESSMENT OF INVESTIGATIVE COSTS

The Commissioner has expended in excess of \$3,700.00 in investigative costs relating to the matter set forth above, and pursuant to the authority granted to the Commissioner under section 10-04-16.1(1)(a) N.D.C.C., the Commissioner hereby assess and orders the respondents to pay investigative costs to the Commissioner in the amount of **\$3,700.00**.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to §10-04-12 N.D.C.C. you may request a hearing before the Securities Commissioner if such a request is made in writing WITHIN TEN (10) DAYS AFTER THE RECEIPT OF THIS ORDER. The respondents have the right to be represented by legal counsel at the hearing.

IN TESTIMONY WHEREOF, witness my hand and seal this 9th day of November, 2000.



A handwritten signature in black ink, appearing to read "Syver Vinje", written over a horizontal line.

Syver Vinje, Securities Commissioner
Office of the Securities Commissioner
600 East Boulevard Ave.
State Capitol – Fifth Floor
Bismarck, ND 58505-0510
(701) 328-2910

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AFFIDAVIT OF MAILING

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I, Jacqui Ferderer, being first duly sworn, state that I am a citizen of the United States over the age of twenty-one years and not a party to or interested in the above-entitled proceeding.

On, November 9, 2000, I deposited in the Central Mailing Bureau of the United States Post Office Department in the State Capitol in Bismarck, North Dakota, true and correct copies of the following document:

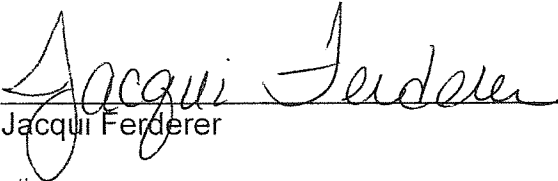
**ORDER, NOTICE OF PENALTY, AND NOTICE
OF RIGHT TO REQUEST A HEARING**

A copy of the above document was securely enclosed in an envelope with postage prepaid, sent via Certified U. S. mail, return receipt requested, and addressed to each of the following:

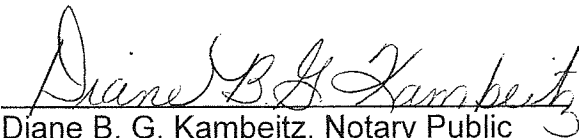
Wesley L. Ringo
US Bancorp Piper Jaffray, Inc.
800 Nicollet Mall, Suite 800
Minneapolis, MN 55402-7020

Christopher Birmingham
US Bancorp Piper Jaffray, Inc.
51 Broadway
Fargo, ND 58102

To the best of my knowledge, information, and belief, the addresses given above are the actual mailing addresses of the parties or the agents of the parties intended to be served.


Jacquie Ferderer

Subscribed and sworn to before me this 9th day of November, 2000.


Diane B. G. Kambeitz, Notary Public
Burleigh County, North Dakota
My commission expires 4/25/2006