STATE OF NEW JERSEY
BUREAU OF SECURITIES
P.O. Box 47029
Newark, New Jersey 07101
(973) 504-3600

In the Matter of

THOMAS WEISEL PARTNERS, LLC
One Montgomery Street
Suite 3700
San Francisco, California 94104

Respondent.

CONSENT ORDER

WHEREAS, THOMAS WEISEL PARTNERS, LLC ("TWP") has been registered as a broker-dealer in the State of New Jersey since January 19, 1999; and

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

WHEREAS, TWP has cooperated with the above regulators during the investigation; and

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

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

WHEREAS, TWP, through its execution of this Consent Order, voluntarily elects to permanently waive any right to a hearing and appeal under N.J.S.A. 49:3-58(c) with respect to this Consent Order (the "Order");

WHEREAS, The Bureau of Securities has jurisdiction over this matter pursuant to the Uniform Securities Law (1997), L. 1997, c.276, N.J.S.A. 49:3-47 et seq.; and

WHEREAS, The Chief of the Bureau of Securities finds the following relief appropriate and in the public interest; and

NOW, THEREFORE, the Chief of the Bureau of Securities, as administrator of the Uniform Securities Law (1997), L. 1997, c.276, N.J.S.A. 49:3-47 et seq., hereby enters this Order:

I. JURISDICTION/CONSENT

TWP admits the jurisdiction of the Bureau of Securities, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Chief of the Bureau of Securities.

The Chief of the Bureau of Securities finds the following facts applicable to this action:

II. FINDINGS OF FACT

A. Background and Jurisdiction

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

2. TWP is registered with the Securities and Exchange Commission, is a member of the New York Stock Exchange, Inc. and the NASD, Inc. and is licensed to conduct securities business on a nationwide basis.

3. TWP describes itself as a "merchant bank providing investment banking, institutional brokerage, private client services, private equity and asset management exclusively focused on the growth sectors of the economy." TWP provides a comprehensive range of advisory, financial, securities research, and investment services to corporate and private clients. TWP also provides investment banking services to corporate clients.

4. TWP is currently registered with the Bureau of Securities as a broker-dealer, and has been so registered since January 19, 1999.

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

B. Overview

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

7. From February 1999 to June 1999, TWP maintained a 4-tiered ratings system: Strong Buy, Buy, Watch List, and Sell. In June of 1999, TWP renamed the Sell rating to Underperform. In August 1999, TWP renamed the Watch List rating to Market Perform so that its 4-tiered ratings system was: Strong Buy, Buy, Market Perform, and Underperform. That rating system remained intact until November 2001.

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

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

10. Research analysts participated in the pitch process for IPOs, secondary offerings and merger and acquisition work that TWP sought to perform on behalf of publicly-traded clients and potential clients. The analysts involved in the pitch process sometimes included the same analysts who were providing or had provided research coverage of the client or potential clients from whom TWP was seeking investment banking business. In written presentations prepared in connection with these pitches, TWP touted the past research "support" it had provided to its client or potential client, and included charts that tracked its coverage and ratings, and the issuer's stock price.

11. TWP analysts considered prospective investment banking business in determining whether to initiate or to continue to provide research coverage for issuers. TWP's investment bankers

participated in the evaluation of TWP research analysts, and a portion of the TWP analysts' compensation was tied to the analysts' success in helping TWP generate investment-banking business. TWP failed to disclose any of these facts to its brokerage clients or to the general public.

12. TWP received at least one payment from another broker-dealer as consideration for TWP's research coverage of a security. TWP failed to disclose the payment or the amount thereof to its brokerage clients or to the general public.

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

C. TWP'S RESEARCH STRUCTURE CREATED CONFLICTS OF INTEREST FOR RESEARCH ANALYSTS

Research Analyst Compensation Tied to Investment Banking Revenue

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

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

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

16. During the relevant period, TWP organized research analysts and investment bankers into "Tiger Teams" along industry groups such as telecommunications and software. Tiger Teams coordinated the efforts of research and investment banking to identify new business opportunities.

17. TWP investment bankers who worked with a TWP research analyst on investment banking deals evaluated the research analyst's performance as part of an annual performance evaluation. That evaluation was considered in setting the analyst's compensation. This input from investment bankers further indicated to research analysts the importance of satisfying the needs of investment bankers and their clients and significantly hampered the independence of research reports that the analysts issued.

TWP Research Analysts Played Important Roles in "Pitches" To Win Investment Banking Business, Promised Research Coverage for IPO Clients, and Provided Coverage Immediately Following the Quiet Periods

18. During the relevant period, research analysts played a pivotal role in winning investment banking business for TWP. Once TWP's investment banking department decided to compete for a company's investment banking business, particularly for an IPO, research analysts played a critical role in obtaining that business.

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

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

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

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

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

22. In advocating retention of TWP, research analysts provided material regarding their research to be included in the pitch books presented to the company or issuer. They also routinely appeared with investment bankers at the pitches to help sell TWP services to the potential client. TWP pitch books to potential clients included representations about the role the research analyst would play if TWP obtained the business. In describing the "Role of Research," the pitch book also provided a roadmap for the amount and type of coverage that the research department would provide. Examples of analysts' participation in the "pitch" process are described below.

Loudcloud

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

24. TWP's relationship with Loudcloud began in February 2000 when the then chairman and founder of Loudcloud contacted a TWP partner and senior research analyst ("Loudcloud

Senior Analyst"). Thereafter, the Loudcloud Senior Analyst and TWP investment bankers met with Loudcloud to discuss potential financing for the company.

25. Prior to Loudcloud's IPO, the Loudcloud Senior Analyst mentioned Loudcloud in a periodic industry report dated June 19, 2000. TWP also invited Loudcloud to attend its annual "Growth Forum" held in late June 2000. Thereafter, TWP solicited underwriting work for Loudcloud's IPO in a presentation made on or about August 16, 2000. During the presentation, TWP touted its ability to provide "aftermarket support," which included, in part, research coverage. The presentation provided case studies on two companies that TWP had covered. The case studies highlighted the amount and types of research, i.e., reports specific to the particular company, periodic industry reports, and white papers that TWP provided for these two companies, suggesting that TWP would do the same for Loudcloud. TWP also highlighted the fact that it mentioned Loudcloud in a June 19, 2000 TWP report and that Loudcloud had attended TWP's annual "Growth Forum" conference.

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

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

28. On April 3, 2001, after TWP participated as an underwriter in the Loudcloud IPO, the Loudcloud Senior Analyst e-mailed senior Loudcloud management stating: "Gentlemen: this e-mail is to inform you that, as promised during the Thomas Weisel Partners [sic] IPO pitch, I initiated written research coverage on Loudcloud this morning – 25 days (to the hour) following the pricing of the offering on March 8th. Our First Call note we will be posted shortly and our +20 page written research report, that you reviewed this weekend and we discussed changes to yesterday, is being sent to editorial and printing today." TWP also provided research coverage of Loudcloud in other periodic industry reports or notes during 2001. TWP's Loudcloud research reports, notes, and other industry publications discussing Loudcloud were distributed through Public Services.

Gemplus

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

30. TWP solicited underwriting work for the Gemplus U.S. IPO in a presentation to company management on or about September 15, 2000. In the presentation, TWP touted its ability to provide research coverage from "multiple angles" through reports specifically related to the company as well as regularly published industry reports highlighting several companies. TWP also presented a case study of research coverage it provided on another company, Verisign, Inc. On a chart depicting Verisign's trade volume and increasing stock price, TWP highlighted dates upon which TWP published recommendations of Verisign's stock. In one instance, the presentation states, "12/21/99 TWP upgrades [Verisign] to a strong buy. Stock jumps $35 in one day," suggesting that TWP could provide the same sort of coverage and results for Gemplus.

31. A TWP partner and senior research analyst ("Gemplus Senior Analyst") had previously developed a relationship with Gemplus management and was largely responsible for TWP being selected as an underwriter for Gemplus' U.S. IPO. A TWP vice-president and junior research analyst ("Gemplus Junior Analyst") assisted the Gemplus Senior Analyst in his research of the company. According to the lead TWP investment banker on the Gemplus U.S. IPO, Gemplus, in selecting TWP as an underwriter, wanted "to make sure that [the Gemplus Senior Analyst] will be the lead [analyst], with [the Gemplus Junior Analyst] on the deal. . . ."

32. A venture capital firm with whom TWP had a business relationship also played a role in Gemplus awarding TWP with an underwriting slot on the IPO. The venture capital firm, Gemplus' controlling shareholder, guaranteed TWP a "minimum total fee of $3 million for being a member of the Gemplus underwriting syndicate."

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

34. On January 3, 2001, the TWP analysts visited the venture capital firm's San Francisco office and discussed Gemplus, among several items, with two senior partners of the venture capital firm. On January 4, 2001, the Gemplus Junior Analyst e-mailed one of the partners of the venture capital firm, writing that "in keeping w/our commitment to support the [Gemplus] stock, we are initiating research coverage tomorrow, Fri., the first day possible after the 25-day quiet period expires in the States." The Gemplus Junior Analyst also advised the venture capital firm partner that "we have not yet had an opportunity to speak w/ [the new Gemplus CFO] regarding any substantive/necessary changes to our model and full report." The Gemplus Junior Analyst continued, "as such, we will publish an abbreviated note in the interim, and would like to set up a conference call as soon as possible to discuss any necessary changes so we can get the full report to our institutional client base." The Gemplus Junior Analyst attached a copy of TWP's European version of the Gemplus report to the e-mail and advised that "we will use as the starting point for any new revision."

35. On January 5, 2001, the Gemplus Senior Analyst e-mailed Gemplus' senior management, as well as partners at the venture capital firm, stating: "Gentlemen: As promised, I am pleased to send you this research note that was transmitted to First Call this morning. This is our launch

of research coverage on Gemplus, 25 days to the hour, following the successful company public offering in the U.S. and Europe." The Gemplus Senior Analyst continued in the e-mail, "we await your final comments on our lengthy written research report that we have already sent you. Following our joint discussions – we will follow through with the publication of the report. Again, it has been a pleasure working with both the Gemplus and [venture capital] management teams. . . We look forward to working together in 2001 and beyond." In addition to soliciting comments of his research report from Gemplus management, the Gemplus Senior Analyst solicited comments on the report from the controlling shareholder of Gemplus. The Gemplus Senior Analyst published the full research report on January 16, 2001.

36. The Gemplus Senior Analyst provided research coverage of the company until August 1, 2001. TWP's Gemplus research reports, notes, and other industry publications were distributed through Public Services.

Research Department Made Coverage Decisions Based Upon Investment Banking Concerns

37. TWP's equity research department also made coverage decisions based, in part, on investment banking concerns. TWP prepared research "Drop Lists" that detailed the institutional commissions generated by the covered companies, the trading profit and loss, the names of the institutional investors and venture capitalist firms who held stock in the covered companies, and the banker feedback concerning whether to drop research coverage. Explaining a January 2001 version of the research Drop List, TWP's Chief Operating Officer

of Investment Banking ("COO of Investment Banking"), e-mailed TWP's Head of Corporate Finance, and TWP's Director of Sales:

I've made an attempt to get banking's feedback on potential banking business for each of these clients. We should also assess the potential impact on affiliated venture capitalists for those companies we decide to drop. . . I will be in touch to schedule a meeting for us to review the list in more detail and provide specific recommendations to [TWP's Chief Operating Officer] and [TWP's then acting Director of Research].

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

Stamps.com

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

40. On July 21, 1999, a TWP partner and senior research analyst ("Stamps.com Senior Analyst") initiated research coverage on Stamps.com with a "Buy" rating. TWP continued its research coverage of Stamps.com in reports it issued during 1999 and 2000. TWP also issued other

periodic industry reports or notes mentioning Stamps.com during the relevant period. TWP's Stamps.com research reports, notes, and other industry publications discussing Stamps.com were distributed through Public Services.

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

42. In late 1999, TWP transitioned research coverage on the company from the Stamps.com Senior Analyst to a TWP vice president and junior research analyst ("Stamps.com Junior Analyst"). On January 29, 2000, the Stamps.com Junior Analyst initiated research coverage with a "Buy" rating. On February 7, 2000, Stamps.com acquired another company and TWP provided Stamps.com with a fairness opinion regarding the acquisition.

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

44. On November 27, 2000, the Stamps.com Junior Analyst e-mailed a TWP partner and Director of East Coast Research (in December 2000, this TWP partner became the acting Director of

Research) explaining reasons why TWP should "kill," or discontinue, research coverage on Stamps.com. The Stamps.com Junior Analyst explained that: (1) Stamps.com was not "core" to the companies he was then covering; (2) there was "no more [investment] banking [business] to be done"; and (3) that there was "limited commission opportunity" as a market maker in Stamps.com's stock.

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

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

47. On January 8, 2001, the acting Director of Research, responded to the Stamps.com Junior Analyst's November 27, 2000 e-mail with a number of edits and instructions to send the e-mail to other senior managers of TWP's Sales and Trading Department, Private Client

Department, and Corporate Finance for their "reactions" to the Stamps.com Junior Analyst's recommendation. Senior TWP management did not object to dropping research coverage on Stamps.com and, in response to the Stamps.com Junior Analyst's e-mail, the head of TWP Corporate Finance advised the Stamps.com Junior Analyst to "drop" coverage on Stamps.com. However, on January 12, 2001, TWP's COO of Investment Banking e-mailed the Stamps.com Junior Analyst advising him that the head of the firm wanted him to "hold on to this stock for now" but that he "shouldn't feel that [he had] to do any work on it, just don't drop it." The COO of Investment Banking further explained that TWP had a number of venture capitalist backed stocks in the Stamps.com sector and that the head of the firm "wants to manage this relationship carefully."

48. The Stamps.com Junior Analyst did not publish any research on Stamps.com after its last note on September 19, 2000. However, TWP never issued a note that it was dropping coverage on Stamps.com.

Verisign

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

50. On June 25, 1999, TWP, through a research report issued by a TWP partner and senior research analyst ("Verisign Senior Analyst"), initiated research coverage on Verisign with a "Buy" rating. TWP continued research coverage of Verisign in reports issued during the

relevant period. TWP also featured Verisign in other periodic industry reports or notes during the relevant period. TWP's Verisign research reports, notes, and other industry publications discussing Verisign were distributed through Public Services.

51. In November 1999, TWP transitioned coverage of Verisign from the Verisign Senior Analyst to a TWP vice president and junior research analyst ("Verisign Junior Analyst"). The Verisign Junior Analyst maintained the "Buy" rating on Verisign until December 21, 1999, when he upgraded his rating to a "Strong Buy." He maintained that rating until January 25, 2001, when he downgraded Verisign's rating to a "Buy." After the Verisign Junior Analyst advised Verisign's CEO that he was downgrading the stock, the Verisign CEO called a TWP partner and demanded that TWP fire the Verisign Junior Analyst. On February 2, 2001, TWP terminated the Verisign Junior Analyst, along with a number of other research analysts, and transitioned Verisign coverage.

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

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

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

D. TWP ISSUED RESEARCH REPORTS ON THREE COMPANIES THAT WERE 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 ISSUERS, AND/OR CONTAINED OPINIONS FOR WHICH THERE WAS NO REASONABLE BASIS

InfoSpace

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

InfoSpace from a TWP partner to a vice president and junior research analyst ("InfoSpace Research Analyst"). InfoSpace's stock trades on the NASDAQ National Market under the ticker symbol INSP.

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

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

58. The InfoSpace Research Analyst privately e-mailed others explaining that he did not think the stock should be rated a "Buy." For example, on January 22, 2001, the InfoSpace Research Analyst explained to a TWP salesperson: "I can't frickin believe that I still have [InfoSpace]

as a buy rating. I need a drink." In an e-mail later that same day to a TWP research associate who was working with him, the InfoSpace Research Analyst explained:

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

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

> heart of the new mgmt team is out and we are left with the same mgmt team that was in place back in April. I did not have confidence in that previous mgmt team's ability to take the company to the next level and I remain 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.

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

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

61. On January 23, 2001, the InfoSpace Research Analyst sent a draft copy of a new research note with a "Buy" rating on InfoSpace to a supervisory analyst for review. The draft research note stated, in part: "we recommend that investors remain cautious on the stock . . . ." The

supervisory analyst e-mailed the InfoSpace Research Analyst, stating: "we cannot tell investors to 'remain cautious' on a BUY-rated stock." The InfoSpace Research Analyst edited the note and deleted the "remain cautious" language as the supervisory analyst suggested and TWP published the note that day.

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

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

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

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

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

> At some point we need to discuss this stock. They report today post-close.

> I have never bothered to downgrade the stock, but made comments to swap into [an InfoSpace competitor]. I think that any [revenue opportunity] for TWP (i.e. banking) has fallen apart so actions can be taken.

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

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

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

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

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

70. On May 30, 2001, the InfoSpace Research Analyst, apparently responding to an e-mail from another one of his assistants, stated: "I agree re: INSP. I hate having it as a buy, 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 November 26, 2001, again with a "Market Perform" rating. In this report, the InfoSpace Research Analyst also explained that he was discontinuing his research coverage of InfoSpace.

Level 3 Communications

71. Level 3 Communications, Inc. is a telecommunications and information services company that operates an advanced international facilities-based communications network based on Internet Protocol technology. Level 3's stock trades on the NASDAQ National Market under the ticker symbol LVLT.

72. TWP commenced its research coverage of Level 3 with a "Buy" rating and a year-end $100 price target on September 15, 2000, when the stock opened at $78.25 per share. TWP maintained its "Buy" rating on Level 3 even as the stock price declined from $78.25 per share to $5.97 per share on June 18, 2001. Not until June 19, 2001 did TWP downgrade its rating of Level 3 to "Market Perform." TWP continued to cover Level 3 until October 26, 2001,

when it discontinued coverage. TWP re-initiated coverage on Level 3 on January 20, 2004.

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

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

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

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

74. On May 31, 2001, in response to an e-mail from TWP's Director of Communications 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.

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

Sprint FON Group

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

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

> this is a market perform company. No 2 ways about it. However, I'm aware of the conflicrt [sic] that is arising due to a better than average probability of our getting on an FON convert deal. Need to speak to you

> about the rating. We could go out with a Buy based on our belief that they are going to accomplish a couple of things, and then explain that failure to do so will cause us to downgrade. We're protected in that case. Let's talk tomorrow.

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

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

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

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

81. In connection with the Hotjobs IPO, the lead underwriter for the Hotjobs IPO made a payment of $40,000 to TWP by a check dated November 4, 1999. The lead underwriter's records concerning the IPO indicate that the lead underwriter made the payment in settlement of a "guaranteed" selling concession to be paid in either stock or cash. The lead underwriter's records indicate that it guaranteed the selling concession to TWP in consideration of the fact

that "[a TWP research partner] will pick up research." TWP did not disclose or cause to be disclosed the fact of this payment.

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

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

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

F. TWP 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

85. During the relevant period, TWP paid portions of certain underwriting proceeds to other brokerage firms to initiate or continue research coverage on issuers for whom TWP served as lead or co-manager. TWP knew that these payments were, in part, for research. TWP did not take steps to ensure that the brokerage firms it paid to initiate or continue coverage of its investment banking clients disclosed that they had been paid to issue such research. Further,

TWP did not disclose or cause to be disclosed in offering documents or elsewhere the fact of or reason for such payments.

Arena Pharmaceuticals

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

Proxicom

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

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

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

III. CONCLUSIONS OF LAW

1. The Bureau of Securities has jurisdiction over this matter pursuant to N.J.S.A. 49:3-47 et seq., and more specifically N.J.S.A. 49:3-66.

2. The Chief of the Bureau of Securities finds the following relief appropriate and in the public interest.

3. N.J.S.A. 49:3-58(a) states that the Bureau Chief may by order deny, suspend, or revoke any registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser: (vii) has engaged in dishonest or unethical practices in the securities, commodities, banking, insurance or investment advisory business, as defined by rule of the bureau chief; or (xi) has failed reasonably to supervise his agents if he is a broker-dealer or issuer; the agents of a broker-dealer or issuer for whom he has supervisory responsibility, or his employees who give investment advice if he is an investment adviser.

   a. TWP, during the period from July 1999 through 2001, failed to exercise reasonable supervision over all of the securities activities of its associated persons and research analysts, as required by N.J.S.A. 49:3-58(a)(2)(xi).

b. TWP, during the period July 1999 through 2001, engaged in acts or practices that created or maintained inappropriate influences by Investment Banking over Research Analysts, thereby creating conflicts of interest for its Research Analysts, and failed to manage these conflicts in an adequate or appropriate manner. This conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii).

c. TWP received payments from outside entities for research issued without disclosing receipt of those payments to the public as required by Section 17(b) of the Securities Act of 1933, as amended. This conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii).

d. TWP made payments for research to other broker-dealers not involved in underwriting transactions when TWP knew that these payments were made, at least in part, for research coverage. TWP failed to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments. This conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii).

e. TWP published exaggerated or unwarranted research on its investment banking clients. This conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii).

The Chief of the Bureau of Securities finds the following relief appropriate and in the public interest.

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 investigation by the Bureau of Securities and any other action that the Bureau of Securities could commence under the Uniform Securities Law (1997), L. 1997, c.276, N.J.S.A. 49:3-47 et seq. on behalf of the State of New Jersey 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 the Bureau of Securities may enforce any claims against TWP arising from or relating to any violation of the "Order" provisions contained herein.

2. TWP will CEASE AND DESIST from engaging in acts in violation of the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., will comply with the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq., and will comply with the undertakings of Addendum A, incorporated herein by reference.

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

4. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings against TWP (collectively, the "Orders") shall not be a ground to deny, suspend or revoke the broker-dealer, agent, investment adviser or investment adviser representative registration pursuant to N.J.S.A. 49:3-58, shall not be a ground for denial or revocation of the transactional or securities exemptions from registration in N.J.S.A. 49:3-50, and shall not be a ground to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any securities registration statement pursuant to N.J.S.A. 49:3-64.

5. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against TWP including, without limitation, the use of any e-mails or other

documents of TWP or of others regarding research practices or limit or create liability of TWP or limit or create defenses of TWP to any claims.

6. Nothing herein shall preclude the State of New Jersey, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Bureau of Securities and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against TWP in connection with certain research and/or banking practices at TWP.

7. This Order shall be binding upon TWP and its successors and assigns. Further, with respect to all conduct subject to Paragraph 2 above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions, the terms "TWP" and "TWP's" as used herein shall include TWP's successors and assigns (which, for these purposes, shall include a successor or assign to TWP's investment banking and research operations, and in the case of an affiliate of TWP, a successor or assign to TWP's investment banking or research operations).

V. MONETARY SANCTIONS

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

As a result of the Findings of Fact and Conclusions of Law contained in this Order, TWP shall pay a total amount of $12,500,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:

1. Five million dollars ($5,000,000.00) to the states (50 states, plus the District of Columbia and Puerto Rico) (TWP's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, TWP shall pay the sum of $129,667.00 of this amount to the State of New Jersey, Bureau of Securities as a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1, to be deposited in the Securities Enforcement Fund, N.J.S.A. 49:3-66.1. The total amount to be paid by TWP to state securities regulators pursuant to the state settlement offer may be reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept TWP's state settlement offer, the total amount of the State of New Jersey payment shall not be affected, and shall remain at $129,667.00;

2. Five million dollars ($5,000,000.00) as disgorgement of commissions and other monies as specified in the SEC Final Judgment;

3. Two million five hundred thousand dollars ($2,500,000.00) to be used for the procurement of independent research, as described in the SEC Final Judgment;

TWP 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 penalty amounts that TWP shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of investors.

TWP further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty amounts that TWP shall pay pursuant to this Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or

otherwise used for the benefit of investors. TWP understands and acknowledges that these provisions are not intended to imply that the State of New Jersey would agree that any other amounts TWP shall pay pursuant to the SEC 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 state, federal or local tax.

If payment is not made by TWP or if TWP defaults in any of its obligations set forth in this Order, the Chief of the Bureau of Securities may vacate this Order, at his 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 and any claims arising from or relating thereto are tolled from and after the date of this Order.

VI. GENERAL PROVISIONS

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

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

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

This Consent Order shall become final upon entry.

Dated this 13th day of April, 2006 FLW

By Order of the Chief of the Bureau of Securities

By: Franklin L. Widmann

Franklin L. Widmann
Chief, Bureau of Securities

CONSENT TO ENTRY OF CONSENT ORDER BY THOMAS WEISEL PARTNERS, LLC

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 Bureau of Securities, 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 Chief of the Bureau of Securities 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 State of New Jersey may make such public announcement concerning this agreement and the subject matter thereof as the State of New Jersey 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 4th day of April, 2005

Thomas Weisel Partners, LLC

By: David Baylor

Title: CAO

SUBSCRIBED AND SWORN TO before me this 4th day of April, 2005.

Notary Public

My Commission expires: 9/30/07

FREDERICKA S. DRUM
Commission # 1439678
Notary Public - California
San Francisco County
My Comm. Expires Sep 30, 2007

Addendum A

Undertakings

The firm shall comply with the following undertakings:

I. Separation of Research and Investment Banking

1. Reporting Lines. Research and Investment Banking will be separate units with entirely separate reporting lines within the firm – i.e., Research will not report directly or indirectly to or through Investment Banking. For these purposes, the head of Research may report to or through a person or persons to whom the head of Investment Banking also reports, provided that such person or persons have no direct responsibility for Investment Banking or investment banking activities, or may report to the head of the firm.

    a. As used throughout this Addendum, the term "firm" means the Respondent, Respondent's successors and assigns (which, for these purposes shall include a successor or assign to Respondent's investment banking and research operations), and their affiliates, other than "exempt investment adviser affiliates."

    b. As used throughout this Addendum, the term "exempt investment adviser affiliate" means an investment adviser affiliate (including, for these purposes, a separately identifiable department or division that is principally engaged in the provision of investment advice to managed accounts as governed by the Investment Advisers Act of 1940 or investment companies under the Investment Company Act of 1940) having no officers (or persons performing similar functions) or employees in common with the firm (which, for purposes of this Section I.1.b, shall not include the investment adviser affiliate) who can influence the activities of the firm's Research personnel or the content of the firm's research reports; provided that the firm (i) maintains and enforces written policies and procedures reasonably designed to prevent the firm, any controlling persons, officers (or persons performing similar functions), or employees of the firm from influencing or seeking to influence the activities of Research personnel of, or the content of research reports prepared by, the investment adviser affiliate; (ii)

obtains an annual independent assessment of the operation of such policies and procedures; and (iii) does not furnish to its customers research reports prepared by the investment adviser affiliate or otherwise use such investment adviser affiliate to do indirectly what the firm may not do directly under this Addendum.

c. As used throughout this Addendum, the term "Investment Banking" means all firm personnel engaged principally in investment banking activities, including the solicitation of issuers and structuring of public offering and other investment banking transactions. It also includes all firm personnel who are directly or indirectly supervised by such persons and all personnel who directly or indirectly supervise such persons, up to and including Investment Banking management.

d. As used throughout this Addendum, the term "Research" means all firm personnel engaged principally in the preparation and/or publication of research reports, including firm personnel who are directly or indirectly supervised by such persons and those who directly or indirectly supervise such persons, up to and including Research management.

e. As used throughout this Addendum, the term "research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the common stock, any security convertible into common stock, or any derivative thereof, including American Depositary Receipts (collectively, "Securities"), of an issuer or issuers and provides information reasonably sufficient upon which to base an investment decision; provided, however, that a "research report" shall not include:

    i. the following communications, if they do not include (except as specified below) an analysis, recommendation or rating (e.g., buy/sell/hold, under perform/market perform/outperform, underweight/market weight/overweight, etc.) of individual securities or issuers:

        1. reports discussing broad-based indices, such as the Russell 2000 or S&P 500 index;

2. reports commenting on economic, political or market (including trading) conditions;

3. technical or quantitative analysis concerning the demand and supply for a sector, index or industry based on trading volume and price;

4. reports that recommend increasing or decreasing holdings in particular industries or sectors or types of securities; and

5. statistical summaries of multiple companies' financial data and broad-based summaries or listings of recommendations or ratings contained in previously-issued research reports, provided that such summaries or listings do not include any analysis of individual companies; and

ii. the following communications, even if they include information reasonably sufficient upon which to base an investment decision or a recommendation or rating of individual securities or companies:

1. an analysis prepared for a current or prospective investing customer or group of current or prospective investing customers by a registered salesperson or trader who is (or group of registered salespersons or traders who are) not principally engaged in the preparation or publication of research reports; and

2. periodic reports, solicitations or other communications prepared for current or prospective investment company shareholders (or similar beneficial owners of trusts and limited partnerships) or discretionary investment account clients, provided that such communications discuss past performance or the basis for previously made discretionary investment decisions.

f. As used throughout this Addendum, the term "technical research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the Securities of an issuer or issuers, that is based solely on prices and trading volume and not on the issuer's financial information, business prospects, or contact with issuer management, and that provides information reasonably sufficient upon which to base an investment decision.

g. As used throughout this Addendum, the term "quantitative research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the Securities of an issuer or issuers, that relies solely on the systematic application of statistical or numerical techniques to publicly available data, that does not include a qualitative assessment of an issuer's business prospects or contact with issuer management, and that provides information reasonably sufficient upon which to base an investment decision.

h. As used throughout this Addendum, the term "Institutional Customer" means an entity other than a natural person having at least $10 million invested in securities in the aggregate in its portfolio and/or under management.

i. As used throughout this Addendum the term "Small Institutional Customer" means an entity other than a natural person having less than $10 million and more than $1 million invested in securities in the aggregate in its portfolio and/or under management.

2. Legal/Compliance. Research will have its own dedicated legal and compliance staff, who may be a part of the firm's overall compliance/legal infrastructure. Such staff may have responsibilities for functions other than research, but shall not have any responsibilities or functions relating to investment banking.

3. Budget. For the firm's first fiscal year following the entry of the Final Judgment in the SEC's action against Respondent in a related proceeding ("Final Judgment") and thereafter, Research budget and allocation of Research expenses will be determined by the firm's senior management (e.g., CEO/Chairman/management committee, other than

Investment Banking personnel) without input from Investment Banking and without regard to specific revenues or results derived from Investment Banking, though revenues and results of the firm as a whole may be considered in determining Research budget and allocation of Research expenses. On an annual basis thereafter, the firm's General Counsel, and at least one member or members of the firm's compliance staff (none of which staff shall have any responsibility relating to investment banking), will review the budgeting and expense allocation process with respect to Research to ensure compliance with this requirement.

4. Physical Separation. Research and Investment Banking will be physically separated. Such physical separation will be reasonably designed to prevent the intentional and unintentional flow of information between Research and Investment Banking.

5. Compensation. Compensation of professional Research personnel will be determined exclusively by Research management and the firm's senior management (but not including Investment Banking personnel) using the following principles:

    a. Investment Banking will have no input into compensation decisions.

    b. Compensation may not be based directly or indirectly on Investment Banking revenues or results; provided, however, that compensation may relate to the revenues or results of the firm as a whole.

    c. A significant portion of the compensation of anyone principally engaged in the preparation of research reports (as defined in this Addendum) that he or she is required to certify pursuant to the U.S. Securities and Exchange's Regulation Analyst Certification ("Regulation AC") (such person hereinafter a "lead analyst") must be based on quantifiable measures of the quality and accuracy of the lead analyst's research and analysis, including his or her ratings and price targets, if any. In assessing quality, the firm may rely on, among other things, evaluations by the firm's investing customers, evaluations by the firm's sales personnel and rankings in independent surveys. In assessing accuracy, the firm may use the

actual performance of a company or its equity securities to rank its own lead analysts' ratings and price targets, if any, and forecasts, if any, against those of other firms, as well as against benchmarks such as market or sector indices.

d. Other factors that may be taken into consideration in determining lead analyst compensation include: (i) market capitalization of, and the potential interest of the firm's investing clients in research with respect to, the industry covered by the analyst; (ii) Research management's assessment of the analyst's overall performance of job duties, abilities and leadership; (iii) the analyst's seniority and experience; (iv) the analyst's productivity; and (v) the market for the hiring and retention of analysts.

e. The criteria to be used for compensation decisions will be determined by Research management and the firm's senior management (not including Investment Banking) and set forth in writing in advance.

f. Research management will document the basis for each compensation decision made with respect to (i) anyone who, in the last 12 months, has been required to certify a research report (as defined in this Addendum) pursuant to Regulation AC; and (ii) anyone who is a member of Research management (except in the case of senior-most Research management, in which case the basis for each compensation decision will be documented by the firm's senior management).

On an annual basis, the Compensation Committee of the firm's holding/parent company (or comparable independent persons, such as the firm's General Counsel and at least one member or members of the firm's compliance staff [none of which staff shall have any responsibility relating to investment banking], or group without management responsibilities) will review the compensation process for Research personnel. Such review will be reasonably designed to ensure that compensation decisions have been made in a manner that is consistent with these requirements.

6. Evaluations. Evaluations of Research personnel will not be done by, nor will there be input from, Investment Banking personnel.

7. Coverage. Investment Banking will have no input into company-specific coverage decisions (i.e., whether or not to initiate or terminate coverage of a particular company in research reports furnished by the firm), and investment banking revenues or potential revenues will not be taken into account in making company-specific coverage decisions; provided, however, that this requirement does not apply to category-by-category coverage decisions (e.g., a given industry sector, all issuers underwritten by the firm, companies meeting a certain market cap threshold).

8. Termination of Coverage. When a decision is made to terminate coverage of a particular company in the firm's research reports (whether as a result of a company-specific or category-by-category decision), the firm will make available a final research report on the company using the means of dissemination equivalent to those it ordinarily uses; provided, however, that no final report is required for any company as to which the firm's prior coverage has been limited to quantitative or technical research reports. Such report will be comparable to prior reports, unless it is impracticable for the firm to produce a comparable report (e.g., if the analyst covering the company and/or sector has left the firm). In any event, the final research report must disclose: the firm's termination of coverage; and the rationale for the decision to terminate coverage.

9. Prohibition on Soliciting Investment Banking Business. Research is prohibited from participating in efforts to solicit investment banking business. Accordingly, Research may not, among other things, participate in any "pitches" for investment banking business to prospective investment banking clients, or have other communications with companies for the purpose of soliciting investment banking business.

10. Firewalls Between Research and Investment Banking. So as to reduce further the potential for conflicts of interest or the appearance of conflicts of interest, the firm must create and enforce firewalls between Research and Investment Banking reasonably designed to prohibit all communications between the two except as expressly described below:

    a. Investment Banking personnel may seek, through Research management (or an appropriate designee with comparable management or control responsibilities ("Designee")) or in the

presence of internal legal or compliance staff, the views of Research personnel about the merits of a proposed transaction, a potential candidate for a transaction, or market or industry trends, conditions or developments. Research personnel may respond to such inquiries on these subjects through Research management or its Designee or in the presence of internal legal or compliance staff. In addition, Research personnel, through Research management or its Designee or in the presence of internal legal or compliance staff, may initiate communications with Investment Banking personnel relating to market or industry trends, conditions or developments, provided that such communications are consistent in nature with the types of communications that an analyst might have with investing customers. Any communications between Research and Investment Banking personnel must not be made for the purpose of having Research personnel identify specific potential investment banking transactions.

b. In response to a request by a commitment or similar committee or subgroup thereof, Research personnel may communicate their views about a proposed transaction or potential candidate for a transaction to the committee or subgroup thereof in connection with the review of such transaction or candidate by the committee. Investment Banking personnel working on the proposed transaction may participate with the Research personnel in these discussions with such committee or subgroup. However, the Research personnel also must have an opportunity to express their views to the committee or subgroup outside the presence of such Investment Banking personnel.

c. Research personnel may assist the firm in confirming the adequacy of disclosure in offering or other disclosure documents for a transaction based on the analysts' communications with the company and other vetting conducted outside the presence of Investment Banking personnel, but to the extent communicated to Investment Banking personnel, such communication shall only be made in the presence of underwriters' or other counsel on the transaction or internal legal or compliance staff.

d. After the firm receives an investment banking mandate, or in connection with a block bid or similar transaction, Research personnel may

(i) Communicate their views on the pricing and structuring of the transaction to personnel in the firm's equity capital markets group, which group's principal job responsibility is the pricing and structuring of transactions;

(ii) Provide to personnel in the firm's equity capital markets group information obtained from investing customers relevant to the pricing and structuring of the transaction;

(iii) Participate with the equity capital markets group, or independently, in efforts to educate the firm's sales force regarding the transaction, including assisting in the preparation of internal-use memoranda (including presentations in electronic format) and communicating with the firm's sales force, provided that Research personnel may not appear jointly with management of the issuer or Investment Banking personnel other than members of the equity capital markets group in such communications with the firm's sales force, and provided that the following conditions are satisfied:

1) Such oral communications by Research personnel with the firm's sales force personnel regarding the transaction in which a recommendation or view, whether or not labeled as such, is expressed by such Research personnel regarding the transaction must have a reasonable basis;
2) Such oral communications to a group of ten or more of the firm's sales force must be "fair and balanced", as such phrase is generally understood under NASD Rule 2210(d)(1) and after taking into consideration the overall context in which such communications are made (hereinafter referred to as the "fair and balanced standard"). In addition, all such oral communications to a group of ten or more of the firm's sales force must be made in the presence of internal legal or compliance personnel;
3) All internal-use memoranda (or portions thereof) regarding such transaction that are identified as being the views of Research personnel (such memoranda or portions thereof hereinafter referred to as "internal

Research memoranda") must comply with the fair and balanced standard;

4) Internal Research memoranda that are distributed to a group of ten or more of the firm's sales force must be reviewed in advance by internal legal or compliance personnel;
5) A written log of all oral communications described in (2) above must be maintained; and
6) All written logs and all internal Research memoranda described in (4) above must be retained for the period required by Rule 17a-4(b)(4).

e. Research personnel may attend or participate in a widely-attended conference attended by Investment Banking personnel or in which Investment Banking personnel participate, provided that the Research personnel do not participate in activities otherwise prohibited herein.

f. Research and Investment Banking personnel may attend or participate in widely-attended firm or regional meetings at which matters of general firm interest are discussed. Research management and Investment Banking management may attend meetings or sit on firm management, risk or similar committees at which general business and plans (including those of Investment Banking and Research) and other matters of general firm interest are discussed. Research and Investment Banking personnel may communicate with each other with respect to legal or compliance issues, provided that internal legal or compliance staff is present.

g. Communications between Research and Investment Banking personnel that are not related to investment banking or research activities may take place without restriction.

11. <u>Additional Restrictions on Activities By Research and Investment Banking Personnel</u>.

a. Research personnel are prohibited from participating in company- or Investment Banking-sponsored road shows related to a public offering or other investment banking transaction.

b. Investment Banking personnel are prohibited from directing Research personnel to engage in marketing or selling efforts to investors with respect to an investment banking transaction.

c. After the firm receives an investment banking mandate relating to a public offering of securities, Research personnel may communicate with investors regarding such offering provided that Research personnel may not appear jointly with management of the issuer or Investment Banking personnel in such communications, and provided that the following conditions are satisfied:

1) Such oral communications by Research personnel with investors regarding the offering in which a recommendation or view, whether or not labeled as such, is expressed by such Research personnel regarding the offering must have a reasonable basis;
2) Such oral communications to a group of ten or more investors regarding such offering must comply with the fair and balanced standard;
3) All such oral communications to a group of ten or more investors must be made in the presence of internal legal or compliance personnel;
4) A written log of all oral communications described in (2) above must be maintained; and
5) All written logs must be retained for the period required by Rule 17a-4(b)(4).

12. Oversight. An oversight/monitoring committee or committees, which will be comprised of representatives of Research management and may include others (but not personnel from Investment Banking), will be created to:

a. review (beforehand, where practicable) all changes in ratings, if any, and material changes in price targets, if any, contained in the firm's research reports;

b. conduct periodic reviews of research reports to determine whether changes in ratings or price targets, if any, should be considered; and

c. monitor the overall quality and accuracy of the firm's research reports;

provided, however, that Sections I.12.a and I.12.b of this Addendum shall not be required with respect to quantitative or technical research reports.

II. Disclosure/Transparency and Other Issues

1. Disclosures. In addition to other disclosures required by rule, the firm must disclose prominently on the first page of any research report and any summary or listing of recommendations or ratings contained in previously-issued research reports, in type no smaller than the type used for the text of the report or summary or listing, that:

    a. "[Firm] does and seeks to do business with companies covered in its research reports. As a result, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report."

    b. With respect to Covered Companies as to which the firm is required to make available Independent Research (as set forth in Section III below): "Customers of [firm] in the United States can receive independent, third-party research on the company or companies covered in this report, at no cost to them, where such research is available. Customers can access this independent research at [website address/hyperlink] or can call [toll-free number] to request a copy of this research."

    c. "Investors should consider this report as only a single factor in making their investment decision."

2. Transparency of Analysts' Performance. The firm will make publicly available (via its website, in a downloadable format), no later than 90 days after the conclusion of each quarter (beginning with the calendar quarter commencing on January 1, 2005), the following information, if such information is included in any research report (other than any quantitative or technical research report) prepared and furnished by the firm during the prior quarter: subject company, name(s) of analyst(s) responsible for certification of the report pursuant to Regulation AC, date of report, rating, price target, period within which the price target is to be achieved, earnings per share forecast(s) for the current quarter, the next quarter and the current full year, indicating the period(s) for which such

forecast(s) are applicable (e.g., 3Q03, FY04, etc.), and definition/explanation of ratings used by the firm.

3. Applicability. Except as specified in the second and third sentences of this Section II.3, the restrictions and requirements set forth in Section I [Separation of Research and Investment Banking] and Section II [Disclosure/Transparency and Other Issues] of this Addendum will only apply in respect of a research report that is both (i) prepared by the firm, and (ii) that relates to either (A) a U.S. company, or (B) a non-U.S. company for which a U.S. market is the principal equity trading market; provided, however, that such restrictions and requirements do not apply to Research activities relating to a non-U.S. company until the second calendar quarter following the calendar quarter in which the U.S. market became the principal equity trading market for such company. Notwithstanding the foregoing, Section I.7 [Coverage] of this Addendum will also apply to any research report (other than the Independent Research made available by the firm pursuant to Section III [Independent, Third-Party Research] of this Addendum) that has been *furnished* by the firm to investors in the U.S., but not prepared by the firm, but only to the extent that the report relates to either (A) a U.S. company, or (B) a non-U.S. company for which a U.S. market is the principal equity trading market. Also notwithstanding the foregoing, Section II.1 [Disclosures] of this Addendum will also apply to any research report (other than the Independent Research made available by the firm pursuant to Section III of this Addendum) that has been *furnished* by the firm to investors in the U.S., but not prepared by the firm, including a report that relates to a non-U.S. company for which a U.S. market is not the principal equity trading market, but only to the extent that the report has been furnished under the firm's name, has been prepared for the exclusive or sole use of the firm or its customers, or has been customized in any material respect for the firm or its customers.

   a. For purposes of this Section II.3, the firm will be deemed to have furnished a research report to investors in the U.S. if the firm has made the research report available to investors in the U.S. or has arranged for someone else to make it available to investors in the U.S.

b. For purposes of this Section II.3, a "U.S. company" means any company incorporated in the U.S. or whose headquarters is in the U.S.

c. For purposes of this Section II.3, the calendar quarter in which a non-U.S. company's "principal equity trading market" becomes the U.S. market is a quarter when more than 50% of worldwide trading in the company's common stock and equivalents (such as ordinary shares or common stock or ordinary shares represented by American Depositary Receipts) takes place in the U.S. Trading volume shall be measured by publicly reported share volume.

4. General.

a. The firm may not knowingly do indirectly that which it cannot do directly under this Addendum.

b. The firm will adopt and implement policies and procedures reasonably designed to ensure that its associated persons (including but not limited to the firm's Investment Banking personnel) cannot and do not seek to influence the contents of a research report or the activities of Research personnel for purposes of obtaining or retaining investment banking business. The firm will adopt and implement procedures instructing firm personnel to report immediately to a member of the firm's legal or compliance staff any attempt to influence the contents of a research report or the activities of Research personnel for such a purpose.

5. Timing. Unless otherwise specified, the restrictions and requirements of this Addendum will be effective within 30 days of the entry of the Final Judgment, except that Section III [Independent, Third-Party Research] of this Addendum will be effective within 180 days of the entry of the Final Judgment.

6. Review of implementation.

a. The firm will retain, at its own expense, an Independent Monitor acceptable to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office to conduct a review to provide reasonable assurance of the

implementation and effectiveness of the firm's policies and procedures designed to achieve compliance with the terms of this Addendum. This review will begin on April 30, 2005. The Independent Monitor will produce a written report of its review, its findings as to the implementation and effectiveness of the firm's policies and procedures, and its recommendations of other policies or procedures (or amendments to existing policies or procedures) as are necessary and appropriate to achieve compliance with the requirements and prohibitions of this Addendum. The report will be produced to the firm and the Staff of the SEC, the NYSE and the NASD within 30 days from the completion of the review, but no later than October 31, 2005. (The SEC Staff shall make the report available to the President of NASAA and the New York Attorney General's Office upon request.) The Independent Monitor shall have the option to seek an extension of time by making a written request to the Staff of the SEC.

b. The firm will have a reasonable opportunity to comment on the Independent Monitor's review and proposed report prior to its submission, including a reasonable opportunity to comment on any and all recommendations, and to seek confidential treatment of such information and recommendations set forth therein to the extent that the report concerns proprietary commercial and financial information of the firm. This report will be subject to the protections from disclosure set forth in the rules of the SEC, including the protections from disclosure set forth in 5 U.S.C. § 552(b)(8) and 17 C.F.R. § 200.80(b)(8), and will not constitute a record, report, statement or data compilation of a public office or agency under Rule 803(8) of the Federal Rules of Evidence.

c. The firm will adopt all recommendations contained in the written report of the Independent Monitor; provided, however, that as to any recommendation that the firm believes is unduly burdensome or impractical, the firm may demonstrate why the recommended policy or procedure is, under the circumstances, unreasonable, impractical and/or not designed to yield benefits commensurate with its cost, or the firm may suggest an alternative policy or procedure designed to achieve the same objective, and submit such explanation and/or alternative policy or procedure in writing to the Independent Monitor and to the Staff of the SEC. The firm and the Independent Monitor

shall then attempt in good faith to reach agreement as to any policy or procedure as to which there is any dispute and the Independent Monitor shall reasonably evaluate any alternative policy or procedure proposed by the firm. If an agreement on any issue is not reached, the firm will abide by the determinations of the Staff of the SEC (which shall be made after allowing the firm and the Independent Monitor to present arguments in support of their positions), and adopt those recommendations the Staff of the SEC deems appropriate.

d. The firm will cooperate fully with the Independent Monitor in this review, including making such non-privileged information and documents available, as the Independent Monitor may reasonably request, and by permitting and requiring the firm's employees and agents to supply such non-privileged information and documents as the Independent Monitor may reasonably request.

e. To ensure the independence of the Independent Monitor, the firm (i) shall not have the authority to terminate the Independent Monitor without the prior written approval of the SEC staff; and (ii) shall compensate the Independent Monitor, and persons engaged to assist the Independent Monitor, for services rendered pursuant to this Order at their reasonable and customary rates.

f. For the period of engagement and for a period of three years from completion of the engagement, the Independent Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any entity with which the Independent Monitor is affiliated or of which he/she is a member, and any person engaged to assist the Independent Monitor in performance of his/her duties under this Order shall not, without prior written consent of the Staff of the SEC, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of three years after the engagement.

g. On October 31, 2008, the firm shall certify to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York

Attorney General's Office, that the firm has complied in all material respects with the requirements and prohibitions set forth in this Addendum or, in the event of material non-compliance, will describe such material non-compliance.

7. Superseding Rules and Amendments. In the event that the SEC adopts a rule or approves an SRO rule or interpretation with the stated intent to supersede any of the provisions of this settlement, the SEC or SRO rule or interpretation will govern with respect to that provision of the settlement and such provision will be superseded. In addition, each of the SEC, NYSE, the NASD, the New York Attorney General's Office and any State that incorporates this Addendum (or equivalent document) into its settlement of related proceedings against the Respondent agrees that the SEC Staff may provide interpretive guidance with respect to the terms of the settlement as requested by the firm and that, subject to Court approval, the SEC and the firm may agree to amend or modify any term of the settlement, in each case, without any further action or involvement by any other regulator in any related proceeding. With respect to any term in Section I or II of this Addendum that has not been superseded (as set forth above) on or before October 1, 2008, it is the expectation of Respondent, the SEC, NYSE, NASD, New York Attorney General's Office and the States that the SEC would agree to an amendment or modification of such term, subject to Court approval, unless the SEC believes such amendment or modification would not be in the public interest.

8. Other Obligations and Requirements. Except as otherwise specified, the requirements and prohibitions of this Addendum shall not relieve the firm of any other applicable legal obligation or requirement.

III. Independent, Third-Party Research

1. Obligation to Make Available. Each year, for the period ending five years after the effective date of this Section III (as set forth in Section II.5 [Timing] of this Addendum), the firm will be required to contract with no fewer than three independent providers of research ("Independent Research Providers") at a time in order to procure and make available Independent Research (as defined below) to the firm's customers in the U.S. as set forth below. The firm may satisfy this requirement by contracting with a consolidator that provides access to

the Independent Research of at least three Independent Research Providers. There is, however, no requirement that there be at least three Independent Research Providers for the Common Stock of each Covered Company (as those terms are defined below):

a. For common stock and equivalents (such as ordinary shares or common stock or ordinary shares represented by American Depositary Receipts) listed on a U.S. national securities exchange or quoted in Nasdaq (such securities hereinafter, collectively, "Common Stock") and covered in the firm's research reports (other than those limited to quantitative or technical research reports) (an issuer of such covered Common Stock hereinafter called a "Covered Company"), the firm, through an Independent Consultant (as discussed below) will use its reasonable efforts to procure, and shall make available to its customers in the U.S., Independent Research on such Covered Company's Common Stock. (If the Independent Research Providers drop coverage or do not timely pick up coverage of the Common Stock of a Covered Company, the firm will not be in violation of any of the requirements in this Section III, and may continue to disseminate its own research reports on the Common Stock of the Covered Company without making available any Independent Research on the Common Stock of the Covered Company, if the firm takes reasonable steps to request that the Independent Consultant procure such coverage promptly.)

    i. For purposes of this Section III, the firm's research reports include research reports that have not been prepared by the firm, but only to the extent that such reports have been furnished under the firm's name, have been prepared for the exclusive or sole use of the firm or its customers, or have been customized in any material respect for the firm or its customers.

    ii. A non-U.S. company for which a U.S. market is not the principal equity trading market shall only be considered a Covered Company if, in the calendar quarter ended March 31, 2004, or in any subsequent calendar quarter during the period that the firm's obligations to procure

and make available Independent Research under this Section III are effective, the publicly reported, average daily dollar volume of U.S. trading in such company's Common Stock (measured by multiplying the publicly reported, average daily share volume of U.S. trading during the quarter by the closing price per share of the Common Stock on the last day of the quarter), exceeded $2.5 million, and (b) the outstanding total public float of the Common Stock as of the last day of such calendar quarter exceeded $150 million, or, if the data necessary to calculate the outstanding total public float is not readily available, the market capitalization of the Common Stock as of the last day of such calendar quarter exceeded $150 million. Further, the firm's obligation to procure and make available Independent Research with respect to such company shall become effective at the later of: (a) 90 days after the end of the calendar quarter in which the company met the foregoing trading and public float tests; or (b) the effective date of this Section III.

b. For purposes of this Section III, Independent Research means (i) a research report (other than technical research reports) prepared by an unaffiliated person or entity, or (ii) a statistical or other survey or analysis of research reports (including ratings and price targets) issued by a broad range of persons and entities, including persons and entities having no association with investment banking activities, which survey or analysis has been prepared by an unaffiliated person or entity.

c. The firm will adopt policies and procedures reasonably designed to ensure that, in connection with any solicited order for a customer in the U.S. relating to the Common Stock of a Covered Company, and if Independent Research on the Covered Company's Common Stock is available, the registered representative will have informed the customer, during the solicitation, that the customer can receive Independent Research on the Covered Company's Common Stock at no cost to the customer (the "Notice Requirement").

d. Notwithstanding the foregoing, the Notice Requirement will not apply to (i) the solicitation of an Institutional Customer unless such Institutional Customer, after due notice and opportunity, has advised the firm that it wishes to have the Notice Requirement apply to it ("Participating Institutional Customer"). Any Institutional Customer who has not so advised the firm is hereinafter referred to as a "Non-Participating Institutional Customer"; (ii) orders as to which discretion was exercised by the firm, pursuant to a written discretionary account agreement or written grant of trading authorization; or (iii) a solicitation by an entity affiliated with the Respondent if such entity does not furnish to its customers research reports under the firm's name, prepared by the firm or for the exclusive or sole use of the firm or its customers, or research reports that have been customized in any material respect for the firm or its customers.

e. For the purposes of the notice, confirmation, and account statement disclosure requirements with respect to orders as to which discretion was exercised by an investment adviser pursuant to a written discretionary account agreement or written grant of trading authorization, the firm must treat the investment adviser as (regardless of whether the investment adviser is an institutional entity or a natural person): (i) a natural person, if such adviser has $1 million dollars or less invested in securities in the aggregate in its portfolio and/or under management; (ii) a Small Institutional Customer if such investment adviser has less than $10 million and more than $1 million invested in securities in the aggregate in its portfolio and/or under management; and (iii) an Institutional Customer if such investment adviser has at least $10 million invested in securities in the aggregate in its portfolio and/or under management. Notwithstanding the foregoing, nothing precludes the firm from providing disclosure in addition to the foregoing required minimum.

f. With respect to a Participating Institutional Customer, the firm may satisfy the Notice Requirement by providing the Participating Institutional Customer with, instead of notice at the time of each solicited order, annual written notice of the

availability of Independent Research on Covered Companies' Common Stock.

g. With respect to a Small Institutional Customer, the firm may satisfy the Notice Requirement by providing the Small Institutional Customer with, instead of notice at the time of each solicited order, annual written notice of the availability of Independent Research on Covered Companies' Common Stock, if such Small Institutional Customer advised the firm that it wishes to receive such annual written notice instead of receiving notice at the time of each solicited order.

h. Each trade confirmation sent by the Respondent to a customer with respect to an order as to which the Notice Requirement applies will set forth (or will be accompanied by a separate statement, which shall be considered part of the confirmation, that will set forth), as of the time the trade confirmation is generated, the ratings, if any, contained in the firm's own research reports and in Independent Research procured for the firm with respect to the Common Stock of the Covered Company that is the subject of the order (the "Trade Confirmation Disclosure Requirement").

   Notwithstanding the foregoing, the Respondent may provide a Small Institutional Customer with, instead of trade-by-trade ratings information on each confirmation, annual written notice of the website(s) where Independent Research ratings information and the firm's ratings information can be found, if such Small Institutional Customer has advised the Respondent that it wishes to receive such annual written notice instead of trade-by-trade ratings information on each confirmation. With respect to the Common Stock of a Covered Company, the website(s) shall make available separate lists setting forth (with respect to each of the firm's research reports and each Independent Research report of each Independent Research Provider) the date of each research report issued by the firm and each IRP, respectively, the name of the issuer covered in such report, and the rating contained therein (if any) over the preceding twelve months ("Qualifying Website(s)").

If customers of the firm (other than Institutional or Small Institutional Customers) have access to the Qualifying Website(s), the Qualifying Website(s) must also provide access, via hyperlink, to the full text of each Independent Research report (regarding the Common Stock of a Covered Company) of each Independent Research Provider over the preceding twelve months.

With respect to a Participating Institutional Customer, the Respondent may satisfy the Trade Confirmation Disclosure Requirement by providing the Participating Institutional Customer with, instead of trade-by-trade ratings information on each confirmation, annual written notice of the Qualifying Website(s) where Independent Research ratings information and the firm's ratings information can be found.

i. Each periodic account statement sent by the Respondent to a customer in the U.S. that reflects a position in the Common Stock of a Covered Company will set forth (or will be accompanied by a separate statement, which shall be considered part of the periodic account statement, that will set forth), as of the end of the period covered by the statement, the ratings, if any, contained in the firm's own research reports and in the Independent Research made available by the firm on the Common Stock of each such Covered Company ("Periodic Account Statement Disclosure Requirement"); provided, however, that this requirement will not apply to Non-Participating Institutional Customers or discretionary accounts, and provided further that, with respect to Participating Institutional Customers, the Respondent may satisfy the Periodic Account Statement Disclosure Requirement by providing Participating Institutional Customers with, instead of ratings information in periodic account statements, annual written notice of the Qualifying Website(s) where Independent Research ratings information and the firm's ratings information can be found.

Notwithstanding the foregoing, the Respondent may satisfy the Periodic Account Statement Disclosure Requirement by providing a Small Institutional Customer with, instead of

ratings information in periodic account statements, annual written notice of the Qualifying Website(s) where Independent Research ratings information and the firm's ratings information can be found, if such Small Institutional Customer has advised the Respondent that it wishes to receive such annual written notice instead of ratings information in periodic account statements.

j. The Independent Research rating(s) disclosed on trade confirmations and periodic account statements as set forth in Section III.1(h) and (i) above shall be chosen by the Independent Consultant. If only one rating is disclosed by Respondent with respect to a particular Covered Company, it cannot be a consensus rating.

k. Notice of the availability of Independent Research on Covered Companies' Common Stock will also be included prominently in the periodic account statements of the Respondent's customers in the U.S., in the firm's research reports, and on the firm's website.

l. The firm will make the Independent Research available to its customers in the U.S. using, for each customer, the means of dissemination equivalent to those it uses to provide the customer with the firm's own research reports, unless the firm and customer agree on another means of dissemination; provided, however, that nothing herein shall require or authorize the firm to comply with the Notice Requirement or make available or disseminate Independent Research at a time when doing so would violate Section 5 of the Securities Act of 1933 or the other provisions of the federal securities laws or the rules and regulations thereunder. If and to the extent the firm is able to make available or disseminate its own research reports on the Common Stock of a Covered Company pursuant to Rule 137, Rule 138(a) or Rule 139(a) under the Securities Act of 1933 and in reliance on Regulation M under the Securities Exchange Act of 1934, then the firm is also authorized and required to make available or disseminate Independent Research on the Common Stock of such Covered Company (even if the Independent Research does not meet the

requirements of such Rule). Notwithstanding this Section III.1.l, if the firm determines, because of legal, compliance or similar concerns, not to furnish or make available its own research reports on the Common Stock of a Covered Company for a limited period of time, it shall not be required to make available the Independent Research on such Covered Company for such period of time.

m. If, during the period that the firm's obligations to procure and make available Independent Research under this Section III are effective, the firm terminates coverage of the Common Stock of a Covered Company, the firm, through its Independent Consultant, will make reasonable efforts to continue to procure and make available Independent Research on the Common Stock of such company for a period of at least 18 months after termination of coverage (subject to expiration of the firm's obligations under this Section III).

n. The firm will not be responsible or liable for (i) the procurement decisions of the Independent Consultant (as discussed in Section III.2 [Appointment of Independent Consultant to Oversee the Procurement of Independent Research] of this Addendum) with respect to the Independent Research, (ii) the Independent Research or its content, (iii) customer transactions, to the extent based on the Independent Research, or (iv) claims arising from or in connection with the inclusion of Independent Research ratings in the firm's confirmations and periodic account statements or on the Qualifying Websites(s), to the extent such claims are based on those ratings. The firm will not be required to supervise the production of the Independent Research procured by the Independent Consultant and will have no responsibility to comment on the content of the Independent Research. The firm may advise its customers of the foregoing in its discretion.

o. The Independent Consultant will not be liable for (i) its procurement decisions, (ii) the Independent Research or its content, (iii) customer transactions, to the extent based on the Independent Research, or (iv) claims arising from or in connection with the inclusion of Independent Research ratings

in the firm's confirmations and periodic account statements or on the Qualifying Websites(s), to the extent such claims are based on those ratings, unless the Independent Consultant has carried out such duties in bad faith or with willful misconduct. The firm will indemnify the Independent Consultant for any liability arising from the Independent Consultant's good-faith performance of its duties as such.

2. Appointment of Independent Consultant to Oversee the Procurement of Independent Research. Within 30 days of the entry of the Final Judgment, an Independent Consultant acceptable to the SEC Staff, the NYSE, the NASD, the President of NASAA, the New York Attorney General and the firm shall be named to oversee the procurement of Independent Research from Independent Research Providers. The Independent Consultant will have the final authority (following consultation with the firm and in accordance with the criteria set forth in Section III.3 [Selection of Independent Research Providers] of this Addendum) to procure the Independent Research. The Independent Consultant will not have had any significant financial relationship with the firm during the prior three years and may not have any financial relationship with the firm for three years following his or her work as the Independent Consultant. The Independent Consultant's fee arrangement will be subject to the approval of the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office. In the event that an Independent Consultant must be replaced, the replacement shall be acceptable to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, the New York Attorney General's Office and the firm, and shall be subject to these same conditions.

3. Selection of Independent Research Providers. The Independent Consultant will seek to procure research reports on the Common Stock of all Covered Companies from Independent Research Providers. Independent Research Providers may not perform investment banking business of any kind and may not provide brokerage services in direct and significant competition with the firm. In addition, the Independent Consultant will use the following criteria in selecting and contracting with Independent Research Providers to provide Independent Research.

    a. whether and to what extent the Independent Research Provider or any of its affiliates or associated persons is engaged in

activities (including, but not limited to, activities involving Covered Companies or their securities), or has a business or other relationship with the firm or any of its affiliates or associated persons, that may conflict or create the appearance of conflict with its preparation and publication of the Independent Research;

b. the desirability of multiple coverage of certain Covered Companies (e.g., by size of company, industry sector, companies underwritten by the firm, etc.);

c. the extent to which the Independent Research Provider has a client base and revenue stream broad enough to ensure its independence from the firm;

d. the utility of the Independent Research Provider's Independent Research to the firm's customers, including the inclusion of ratings and price targets in such research and the extent to which the firm's customers actually use the research; and with respect to surveys or analyses described above in Section III.1.b(ii), the extent to which the Independent Research provides customers with a means of comparing the firm's research reports to those published by other persons and entities, including persons and entities having no association with investment banking activities;

e. the quality and accuracy of the Independent Research Provider's past research, including during the term of the Independent Consultant's tenure;

f. the experience, expertise, reputation and qualifications (including, as appropriate, registrations) of the Independent Research Provider and its personnel; and

g. the cost of the Independent Research, especially in light of the five-year period set forth in Section III.1 above for the firm to make Independent Research available to its investing customers.

4. Disclosure Language. Language substantially to the effect set forth below may be used by the firm and its registered representatives to inform the firm's customers of the availability of Independent Research:

    a. {Disclosure to customers as required by Section III.1.c [Obligation to Make Available subpart c] of this Addendum.}

    "There is also independent, third-party research available on this company, which you can get at no cost [from our website/hyperlink] or by calling [toll-free number], or which I can arrange to send to you if you would like."

    b. {General website and periodic customer account statement disclosure as required by Section III.1.k. [Obligation to Make Available subpart k] of this Addendum.}

    "Independent, third-party research on certain companies covered by the firm's research is available to customers of [firm] in the United States at no cost. Customers can access this research at [our website/hyperlink] or can call [toll-free number] to request that a copy of this research be sent to them."

5. Annual Reporting. The Independent Consultant will report annually to the Staff of the SEC, the NYSE, the NASD, the President of NASAA, and the New York Attorney General's Office on its selection of Independent Research Providers, the Independent Research it has procured, the cost of the Independent Research it has procured to date, and the Independent Consultant's fees and expenses to date.