UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, D.C. 20549-0911,

Plaintiff,

– against –

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

Defendant.

Civil Action No. 04 CV 06910

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission" or "SEC") alleges:

NATURE OF THE ACTION

1. The Commission brings this action against defendant Thomas Weisel Partners LLC ("TWP") to redress its violations of the Securities Act of 1933 ("Securities Act"), and rules of the New York Stock Exchange ("NYSE") and of NASD Inc. ("NASD").

2. From July 1999 through 2001 (the "relevant period") TWP engaged in acts and practices that created and/or maintained inappropriate influence by investment banking over research analysts, thereby creating conflicts of interest for its research analysts. During this time period, TWP offered its research analysts and securities research coverage in order to assist in gaining investment banking business and receive investment banking fees. It also received at least one payment from another investment bank to cover that bank's investment banking client, and made payments to other securities firms primarily for research coverage for its investment banking clients. In addition, TWP compensated its research analysts based in part upon their

contributions to TWP's investment banking business. These relationships and activities constituted substantial conflicts of interest for TWP's research analysts. As to three issuers (InfoSpace, Inc., Level 3 Communications, Inc., and Sprint Fon Group), these conflicts resulted in the issuance of research reports 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.

3. TWP also failed to establish and maintain adequate policies and procedures reasonably designed to manage the conflicts of interest described herein.

4. By its conduct, TWP violated Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)], NASD Conduct Rules 2110, 2210(d)(1) and (d)(2), and 3010, and NYSE Rules 342, 401, 472, and 476(a)(6).

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter, and venue is proper, pursuant to Sections 20(b) and 22 of the Securities Act [15 U.S.C. §§ 77t(b) and 77v], and Sections 21(d)(1), 21(e), 21(f), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1), 78u(e), 78u(f) and 78aa].

6. TWP, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the acts, transaction, and practices alleged herein.

7. Venue is appropriate in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because TWP is found, has offices, and transacts business in this District.

DEFENDANT

8. 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. TWP has been registered with the Commission as a broker-dealer since January 1999.

9. 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.

FACTUAL ALLEGATIONS

10. 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").

11. 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.

12. 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 as "Underperform."

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

A. Research Analyst Compensation Tied to Investment Banking Revenue

18. 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.

19. 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.

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

20. 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.

21. 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.

C. 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

22. 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.

23. 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."

24. 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.

25. 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.

26. 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.

1. <u>Loudcloud</u>

27. 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.

28. 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.

29. 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.

30. 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]."

31. 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.

32. 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.

2. <u>Gemplus</u>

33. 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.

34. 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.

35. 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. . . ."

36. 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."

37. 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."

38. 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."

39. 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.

40. 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.

D. **Research Department Made Coverage Decisions Based Upon Investment Banking Concerns**

41. 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 Office 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].

42. 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."

1. Stamps.com

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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."

51. 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."

52. 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.

2. Verisign

53. 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.

54. 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 available on Publicly Available Services.

55. 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.

56. 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."

57. 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."

58. 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.

II. 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

A. InfoSpace

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. 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.

66. 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."

67. 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.

68. 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. . . ."

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

B. <u>Level 3 Communications</u>

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

C. <u>Sprint FON Group</u>

80. 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.

81. 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.

82. 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.

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

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

IV. 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

89. 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.

A. Arena Pharmaceuticals

90. 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.

B. Proxicom

91. 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."

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

92. 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.

FIRST CLAIM FOR RELIEF

[Violation of NASD and NYSE Conduct Rules Due to Conflicts of Interest Resulting from Investment Banking Influence over Research Analysts]

93. Paragraphs 1-92 are realleged and incorporated by reference.

94. NASD Conduct Rule 2110 requires members to observe high standards of commercial honor and just and equitable principles of trade.

95. NYSE Rule 401 states that "[e]very member, allied member and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs."

96. NYSE Rule 476(a)(6) prohibits member organizations, among other things, from engaging in practices that constitute conduct inconsistent with just and equitable principles of trade.

97. During the relevant period, TWP engaged in the acts and practices described above that created and/or maintained inappropriate influence by investment banking over research analysts and therefore imposed conflicts of interest on its research analysts. TWP failed to manage these conflicts in an adequate or appropriate manner.

98. By reason of the foregoing, TWP violated NASD Conduct Rule 2110 and NYSE Rules 401 and 476(a)(6).

SECOND CLAIM FOR RELIEF

[Violation of Section 17(b) of the Securities Act and NASD and NYSE Rules by Receiving a Payment for Research and Failing to Disclose the Receipt of Such Payment]

99. Paragraphs 1-92 and 94-96 are alleged and incorporated by reference herein.

100. In the offer or sale of securities, TWP published, gave publicity to, and/or circulated communications which, though not purporting to offer a security for sale, described such security for a consideration received, directly or indirectly, from an issuer, underwriter or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

101. Section 17(b) of the Securities Act states:

> It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate

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

102. NASD Rule 2210 and NYSE Rule 472 govern members' communications with the public, including requirements relating to research communications and research reports.

103. By reason of the foregoing, TWP violated Section 17(b) of the Securities Act, NASD Conduct Rules 2110 and 2210(d)(1)(A) and NYSE Rules 401, 472, and 476(a)(6).

THIRD CLAIM FOR RELIEF

[Violation of NASD and NYSE Rules by Making or Facilitating Payment for Research]

104. Paragraphs 1-92, 94-96 and 102 are alleged and incorporated by reference herein.

105. As alleged above, TWP used proceeds from offerings to make payments to other broker-dealers for research coverage. TWP did not disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments.

106. By reason of the foregoing, TWP violated NASD Conduct Rules 2110 and 2210(d)(1)(A) and NYSE Rules 401, 472 and 476(a)(6).

FOURTH CLAIM FOR RELIEF

[Violation of NASD and NYSE Rules by Publishing Exaggerated or Unwarranted Research]

107. Paragraphs 1-92 and 94-96 are alleged and incorporated by reference herein.

108. NASD Rule 2210 and NYSE Rule 472 require members' communications with the public to be based on principles of fair dealing and good faith, provide a sound basis for

evaluating facts, be properly balanced, and/or not contain exaggerated or unwarranted claims and/or opinions for which there was not reasonable basis.

109. As alleged above, in several instances TWP issued certain research reports for 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 companies, and/or contained opinions for which there was no reasonable basis.

110. By reason of the foregoing, TWP violated NASD Conduct Rules 2110 and 2210(d)(1) and (d)(2) and NYSE Rules 401, 472 and 476(a)(6).

FIFTH CLAIM FOR RELIEF

[Violation of NASD and NYSE Rules by Failing to Supervise]

111. Paragraphs 1-92 are alleged and incorporated by reference herein.

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

113. NYSE Rule 342 requires members, among other things, to maintain "appropriate supervisory control" over all business activities to ensure compliance with securities laws and regulations, including providing a "separate system of follow-up and review to determine that the delegated authority and responsibility is being properly exercised."

114. TWP failed to establish and maintain adequate procedures over research analysts to prevent or manage conflicts of interest.

115. By reason of the foregoing, TWP violated NASD Conduct Rule 3010 and NYSE Rule 342.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter final judgment:

a. Permanently restraining and enjoining defendant from violating Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)], NASD Conduct Rules 2110, 2210, and 3010, and NYSE Rules 342, 401, 472 and 476(a)(6);

b. Ordering defendant to account for and disgorge all proceeds it has obtained as a result of its conduct, plus prejudgment interest thereon;

c. Ordering defendant to pay civil money penalties; and

d. Ordering such other and further relief as this Court may deem just and appropriate.

Respectfully submitted,

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