

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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3 In the Matter of)
4) Order No.: S-04-251-04-CO01
5 DEUTSCHE BANK SECURITIES, INC,)
6 Respondent.)
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CONSENT ORDER

9 WHEREAS, DEUTSCHE BANK SECURITIES, INC. (“Deutsche Bank”) is a broker-dealer registered in the State of Washington;

11 WHEREAS, a coordinated investigation into Deutsche Bank activities concerning securities research analysts’ conflicts of interest and investment banking business practices during the period of approximately 1999 through 2001 has been conducted by a multi-state task force and the U.S. Securities and Exchange Commission (“SEC”);

15 WHEREAS, the California Department of Corporations conducted an investigation (with the assistance of the District of Columbia Securities Bureau and the State of Maryland Attorney General's Office) into the practices at Deutsche Bank;

18 WHEREAS, Deutsche Bank has cooperated with the above securities regulators during the investigation;

20 WHEREAS, Deutsche Bank has agreed to resolve the aforementioned investigation;

21 WHEREAS, Deutsche Bank agrees to adopt and implement certain changes to securities research analysts’ conflicts of interest and investment banking business practices and to make certain payments as set forth herein;

24 WHEREAS, Deutsche Bank voluntarily elects to permanently waive any right to a hearing and to judicial review pursuant to RCW 34.05 with respect to this Administrative Consent Order (the “Order”);

27 CONSENT ORDER

1 WHEREAS, The State of Washington has jurisdiction over this matter pursuant to RCW
2 21.20, the Securities Act of Washington;

3 WHEREAS, The Securities Division, Department of Financial Institutions finds the
4 following relief appropriate and in the public interest; and

5 NOW, THEREFORE, the Securities Administrator, as administrator of the Securities Act of
6 Washington, RCW 21.20, hereby enters this Order:

7 **I. ALLEGATIONS OF FACT**

8 1. Deutsche Bank admits the jurisdiction of the Securities Division, Department of
9 Financial Institutions, neither admits nor denies the Findings of Fact and Conclusions of Law
10 contained in this Order, and consents to the entry of this Order by the Securities Division,
11 Department of Financial Institutions.

12 2. The Securities Administrator finds the following facts applicable to this action:

13 **A. General Findings Of Fact:**

14 3. From July 1999 through 2001 (“the relevant period”), Deutsche Bank engaged in acts
15 and practices that created and/or maintained inappropriate influence by investment banking over
16 research analysts, thereby creating conflicts of interest for its research analysts. Deutsche Bank
17 failed to manage these conflicts in an adequate manner. During this time period, Deutsche Bank
18 offered research coverage in order to gain investment banking business and receive investment
19 banking fees. It received over \$1 million from other investment banks to provide research
20 coverage of their investment banking clients, and made payments of approximately \$10 million to
21 other securities firms primarily for research coverage for its investment banking clients. In
22 addition, Deutsche Bank compensated its research analysts based in part upon their contributions to
23 Deutsche Bank’s investment banking business. These relationships and activities constituted
24 substantial conflicts of interest for Deutsche Bank’s research analysts.

25 4. Deutsche Bank failed to establish and maintain adequate policies and procedures
26 reasonably designed to manage these conflicts of interest.

27 5. Deutsche Bank also failed to promptly produce copies of e-mail communications that

1 had been requested by the staff during the investigation. Despite repeated inquiries from the staff
2 and state investigators, Deutsche Bank insisted during the investigation that its production of the e-
3 mail was complete. In fact, Deutsche Bank had produced less than one-fourth of the responsive e-
4 mail by April 2003. Over the next year, Deutsche Bank produced another 227,000 e-mail, more
5 than tripling its original production and delaying completion of the investigation for over a year.

6 DEFENDANT

7 6. Deutsche Bank Securities Inc. is a Delaware corporation with its headquarters and
8 principal executive offices in New York, New York. It has branch offices throughout the U.S.,
9 including Washington, D.C., San Francisco, Los Angeles, and Baltimore. Deutsche Bank is a
10 broker-dealer registered with the Commission pursuant to Section 15(b) [15 U.S.C. § 78o(b)] of the
11 Exchange Act and is a member of NASD and NYSE. Deutsche Bank provides a comprehensive
12 range of advisory, financial, securities research, and investment services to corporate and private
13 clients. Deutsche Bank's clients include both institutional investors and individual investors (often
14 referred to as "retail customers"). Deutsche Bank also provides investment banking services to
15 corporate clients.

16 7. Deutsche Bank is currently registered with the Securities Division, Department of
17 Financial Institutions as a broker-dealer, and has been so registered since before November 8,
18 1983.

19 FACTUAL ALLEGATIONS

20 I. BACKGROUND

21 A. The Role of Research Analysts at Deutsche Bank

22 8. Deutsche Bank has a securities research department called the "equity research
23 department," which provides its investment clients and the public with research reports on certain
24 public companies. Research analysts at Deutsche Bank are generally assigned to review the
25 investment outlook of specific public companies within a certain industry or sector, such as
26 technology or biosciences. This is called "covering" a company's stock. In their research reports,
27 analysts typically review the performance of the covered companies, evaluate their business

1 prospects, and provide analysis and projections regarding the future prospects of the company.
2 They also provide a rating or recommendation as to whether the company presents a good
3 investment opportunity, and often provide a price target (the market price at which the analyst
4 expects the stock to trade within a given time).

5 9. During the relevant period, Deutsche Bank analysts made themselves available via
6 telephone, electronic mail, and in person to the firm's institutional and retail sales force to answer
7 questions about industry sectors and companies covered by the analyst. In addition, analysts
8 provided periodic research updates to the sales forces through "morning calls" held before the start
9 of trading.

10 10. During the relevant period, Deutsche Bank had a four-point rating system: "Strong
11 Buy"; "Buy"; "Market Perform"; and "Market Underperform." According to the firm's policy, a
12 "Strong Buy" or "1" rating meant that "DBSI expects, with a high degree of confidence, that the
13 securities will significantly outperform the market time frame and that the time to buy the
14 securities is now." A "Buy" or "2" rating meant that "DBSI expects that the securities will out
15 perform the market by 10% or more over the next 12 months." A "Market Perform" or "3" rating
16 meant that "DBSI expects that the securities will broadly perform in line with the local market over
17 a 12-month period and the share price is likely to trade within a range of +/- 10%." A "Market
18 Underperform" or "4" rating meant that "DBSI expects the securities to underperform against the
19 local market by 10% or more over the next 12 months."

20 11. During the relevant time period, a substantial majority of the companies covered by
21 Deutsche Bank's analysts in the technology, biotechnology, media, and telecommunications
22 sectors received a Buy or Strong Buy rating. In contrast, only one of the more than 250 companies
23 covered by Deutsche Bank during the time period had lower than a Market Perform. Accordingly,
24 what Deutsche Bank held out as a four-point rating system for stocks in the above sectors was
25 effectively a three-point system.

26 12. Deutsche Bank distributed its analysts' research reports internally to various
27 departments at the firm, made the reports available to its institutional and retail customers, and

1 disseminated the reports to subscription services such as First Call and Bloomberg. The firm's
2 customers received the research reports through the firm's website and also through electronic mail
3 or postal mail if they were on the firm's mailing lists. Analysts' recommendations were also
4 reported in the U.S. financial news media.

5 13. Deutsche Bank held out its research analysts as providing independent, objective and
6 unbiased information, reports, and recommendations upon which investors could rely in making
7 informed investment decisions.

8 **B. Investment Banking at Deutsche Bank**

9 14. Deutsche Bank's investment banking division assists companies with raising capital
10 through initial public offerings ("IPOs"), "follow-on" offerings (subsequent offerings of stock to
11 the public), and private placements of stock. It also assists companies with negotiating and
12 brokering other corporate transactions, such as mergers and acquisitions. During the relevant
13 period, investment banking was an important source of revenue for Deutsche Bank, accounting for
14 approximately 29.2% of its total revenues.

15 15. Deutsche Bank generally competes with other investment banks for selection by issuers
16 and other sellers of securities as lead underwriter or "bookrunner" on securities offerings. The lead
17 underwriters receive the largest portion of the investment banking fees, called underwriting fees;
18 accordingly, there are significant financial rewards to being selected as the lead underwriter. The
19 lead underwriters also establish the allocation of shares in a securities offering and typically retain
20 the greatest number of shares for themselves. The typical IPO generates significant investment
21 banking fees for the lead underwriters. During the relevant period, Deutsche Bank was the ninth
22 largest underwriter in the U.S. securities market, receiving about \$1.15 billion in investment
23 banking fees.

24 16. In addition to their research responsibilities, analysts assisted investment bankers in
25 performing due diligence on investment banking transactions.

1 **II. DEUTSCHE BANK'S RESEARCH STRUCTURE**
2 **CONTAINED CONFLICTS OF INTEREST**

3 17. Because Deutsche Bank does not charge for its research, the Americas Equity Research
4 Department at Deutsche Bank was a "cost center." Its costs were substantially funded by the
5 firm's departments responsible for institutional clients and investment banking. During the
6 relevant period, the equities department funded 50% of the research department's expenses, the
7 investment banking department funded 43%, and the retail department funded 7%.

8 18. Investment banking considerations were an important factor in deciding what research
9 to provide and how much research analysts were paid. As stated below, Deutsche Bank's
10 compensation structure rewarded analysts for investment banking deals consummated in their
11 sectors. Investment banking interests also played a role in determining which companies would be
12 covered by the firm's analysts and which would be dropped.

13 **A. Analysts' Compensation Was Determined In Part By**
14 **The Analysts' Contribution to Investment Banking Revenues**

15 19. In order to "align" the interests of the analysts with the interests of the other
16 departments at the firm whose revenues funded the research department, Deutsche Bank created an
17 "analyst performance matrix" that ranked all of Deutsche Bank's analysts based upon several
18 criteria. Beginning in 2000, Deutsche Bank determined bonuses for its research analysts based
19 upon this matrix. These bonuses, which ranged from hundreds of thousands to millions of dollars,
20 made up the vast majority of most analysts' compensation.

21 20. In 2000, under the matrix, one-third of an analyst's ranking was based upon the
22 analyst's contribution to investment banking, one-third upon his or her contribution to the
23 institutional investor franchise, and one-third upon the research director's subjective assessment.
24 In 2001, a fourth equally-weighted category – the analysts' ranking in independent surveys, such as
25 the All American Institutional Investor Poll – was added to the matrix.

26 21. Analysts received "credit" for all investment banking deals in their sector (regardless of
27

1 whether they worked on the deal), as well as deals outside their sector to which they contributed
2 personally. This amount was then adjusted upward or downward by 25-30% based upon the
3 reviews provided by the investment bankers who worked with the analyst. Thus, if an analyst was
4 helpful to investment bankers in the analyst's sector by, for example, generating deals for his
5 sector, the analyst could get a high rating from the investment banker and thus increase his rating in
6 the matrix and, potentially, the size of the analyst's bonus.

7 22. Investment bankers rated analysts based on a scale of 1 ("Analyst Extremely Important
8 To A Majority Of Investment Banking Revenue. Without The Analyst, Our Revenue Would Have
9 Been More Than 50% Below What We Generated.") to 5 ("Analyst Had A Negative Impact On
10 Investment Banking Revenue."). Analysts at the top of the matrix – and thus who received the
11 largest bonuses – typically received all 1's or 2's from investment bankers, as well as scored highly
12 in other areas of the matrix.

13 23. Deutsche Bank research management circulated draft quarterly investment banking deal
14 reports to analysts to verify the investment banking deals for which analysts were to receive credit.
15 Analysts were encouraged to, and did, respond to these reports with additional examples of deals in
16 their sector or on which they had worked.

17 24. In these responses and in the yearly performance self-evaluations that analysts
18 completed, many analysts identified the importance of their work in bringing investment banking
19 business to Deutsche Bank and the value of that work to the firm. For example, analysts stated in
20 their self-evaluations:

- 21
- 22 (a) "Won two lead managed IPO mandates ... Won one secondary offering ... as
23 a result of relationship with management team (our investment bankers did
24 not have any previous relationship with the Company). ... DBAB generated
25 a \$400K (roughly) fee. Participated in winning mandate on ... convertible
26 debt offering despite previous ... analyst leaving DBAB. ... DBAB earned
27 a \$10M (roughly) fee.... My previous management relationships allowed the
28 firm to make equity investment in a number of promised private
communications equipment companies.";
- (b) Completed 8 banking deals ..., generating an estimated \$8-10 million in
fees; 7 of the 8 were either research driven or solely research driven ... Were

1 invited to pitch ... the \$2-3 billion [company] IPO; I started the ball rolling.”

2 25. In certain instances, research management requested that analysts complete “business
3 plans,” such as when transitioning coverage from one analyst to another. Analysts discussed the
4 investment banking imperatives that they had addressed through coverage of certain areas or
5 companies or otherwise. For example, in an April 2001 e-mail exchange between two analysts,
6 one analyst said that he was told one of his goals for the year was to “generate at least as much in
7 banking fees as he did last year.”

8 26. Research management based promotion decisions in part upon the analyst’s assistance
9 to the firm’s investment banking business.

10 27. In sum, research analysts at Deutsche Bank were compensated millions of dollars in
11 part for their contribution in winning the business of investment banking clients, for whom they
12 issued reports, ratings and recommendations.

13 **B. Investment Banking Interests Influenced Coverage Decisions**

14 28. The research department at Deutsche Bank made decisions about the stocks on which
15 its analysts would initiate and maintain coverage based in part upon investment banking concerns.
16 According to the director of research, investment banking opportunities were a factor in
17 determining research coverage. For example, one analyst testified that he agreed to maintain
18 coverage of certain companies he would otherwise drop until the banker had the opportunity to
19 “close” the transactions the banker was hoping to win.

20 29. In another example, an analyst expressed her disappointment in a February 2001 e-mail
21 that Deutsche Bank had not been included in an offering by Charlotte Russe Holding Inc. The
22 analyst stated that “the only reason we picked up coverage of the stock [Charlotte Russe Holding
23 Inc.] was to be involved in IB flow.” The analyst had just rated the company a “Buy” on
24 December 21, 2000.

25 30. Analysts also routinely identified to their investment banking counterparts private
26 companies that might go public. Often, it was the research analyst’s relationship with the company
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1 that convinced the company to use Deutsche Bank's investment banking services. If the company
2 did indeed use Deutsche Bank for its investment banking business, the analyst would typically
3 cover the company for Deutsche Bank. The fact that the analyst had originated Deutsche Bank's
4 investment banking transaction with the company that he covered presented a potential conflict of
5 interest.

6 31. In July 2000, a banker in the Hong Kong office of Deutsche Bank sent an e-mail to the
7 director of research stating that "the lack of coverage [of Pacific Century Cyberworks] continues to
8 be a major problem in our relationship, and we have been categorically assured that none of [the
9 company owner's] (very substantial) deal flow will come our way until we make good on our
10 promise" The director of research later sent an e-mail to his assistant stating "we need to have
11 active, co-coverage of this name in the US. been [sic] a big fee paying customer of ours that we
12 have promised US coverage that past US research management agreed to."

13 32. In addition to initiating positive coverage on investment banking clients, Deutsche Bank
14 research analysts at times maintained favorable ratings on investment banking clients' stocks, even
15 in the face of precipitous declines in the stocks' prices.

16 33. For example, Deutsche Bank acted as a lead underwriter for the Webvan IPO in
17 November 1999 and initiated coverage with a Strong Buy rating and \$50 price target shortly
18 thereafter. At the time, the stock was trading at \$24.69. In a series of reports issued in April-July
19 2000, although the new analyst covering the stock recognized and discussed significant risk factors
20 facing the company in his reports, he maintained the Strong Buy rating (with no price target) even
21 as the stock dropped to the \$6-9 range. On September 15, 2000, with the stock trading at \$3.47, the
22 analyst downgraded Webvan to a Buy. On January 10, 2001, with Webvan at \$0.44, the analyst
23 downgraded it to Market Perform, and held that rating on July 9, 2001, when Webvan declared
24 bankruptcy.

25 34. Similarly, in March 2000, Deutsche Bank had a Strong Buy recommendation on the
26 stock of Peregrine Systems. At the time, the stock was trading at over \$70. In April 2000,
27 although the stock had dropped to \$24.50, Deutsche Bank maintained its Strong Buy

1 recommendation. Deutsche Bank continued its Strong Buy recommendation until the stock price
2 hit \$0.24 in September 2002.

3 **C. Deutsche Bank Implicitly Promised Potential**
4 **Investment Banking Clients Favorable Research Coverage**

5 35. To win investment banking business for a public company, securities firms typically put
6 together a presentation (soliciting an issuer's investment banking business is called "pitching the
7 company"). Investment banks make "pitches" for any kind of investment banking business, most
8 frequently for initial public offerings ("IPOs") and follow-on offerings. The presentation material
9 is referred to as a "pitchbook." The pitchbooks were presented to the company's management by
10 Deutsche Bank investment bankers.

11 36. During the relevant period, Deutsche Bank implicitly promised in its pitchbooks that its
12 research analysts would cover the company if the company gave it investment banking business.
13 Deutsche Bank pitchbooks spoke of the firm's "commitment to research" and to the company,
14 stating that Deutsche Bank's "commitment doesn't end with the IPO" and that Deutsche Bank
15 would "be [the company's] leading advocate." Analysts prepared one section of the pitchbooks,
16 entitled "Research Positioning." Deutsche Bank analysts typically prepared this section after
17 completing some due diligence on the company and discussed in the section how the analyst would
18 market the company to investors in research reports. Generally, the research positioning section of
19 the pitchbook made a variety of positive statements about the company. For example, the
20 pitchbook would sometimes state that Deutsche Bank analysts would promote the company's
21 "compelling business model," its action in "rebuilding supply chains to provide superior value to
22 producers and customers," or its "huge market opportunity." Pitchbooks described analysts as the
23 "key 'Champion'" of the pitched companies.

24 37. In other pitchbooks, the promise of positive research coverage was suggested by
25 reference to Deutsche Bank's positive coverage of other companies. Deutsche Bank described how
26 the analyst had covered another company – and how the analyst's favorable ratings of the stock
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1 corresponded with the stock's rise in price. For example, the December 11, 2001 pitchbook for
2 LeapFrog Enterprises, Inc. ("LeapFrog") similarly promoted the analyst's reports on another
3 company – his Buy and Strong Buy ratings of that company in frequent research reports – and
4 graphed them against the stock price of the company to suggest that the analyst's ratings and
5 reports assisted in the increase in the stock's price. Several months later, Deutsche Bank was
6 selected as a co-manager for LeapFrog and received investment banking fees.

7 38. Deutsche Banks' pitchbooks also typically discussed the "research commitment" of the
8 firm, stating that the analyst would engage in various activities in connection with the IPO,
9 including pre-marketing, marketing, initial coverage, ongoing coverage, industry reports,
10 sponsorship of visits, dinners with key investors, and investor presentations. The analyst also
11 assisted the investment bankers in performing due diligence on the company, and had a say in
12 whether the firm would participate in the offering. If the analyst did not support the deal, the firm
13 typically would not proceed with the offering.

14 39. In addition to preparing part of the pitchbook, research analysts often accompanied
15 investment bankers on the pitches to the company. After the pitch and once Deutsche Bank was
16 selected as the underwriter, the analyst typically worked together with the investment banker to
17 (among other things) perform additional "due diligence" on the offering and participated in so-
18 called "roadshows" to meet institutional investors.

19 40. It was understood by all parties involved - the analyst, the underwriters, and the issuer -
20 that the analyst would speak favorably about the issuer when initiating coverage. Indeed, at least
21 one pitchbook implied that Deutsche Bank would provide favorable coverage. In October 1999,
22 Deutsche Bank marketed a European-based company called Autonomy for its U.S. IPO. (At the
23 time, Deutsche Bank had an analyst in London covering the company for the European markets.)
24 The pitchbook for Autonomy showed a timeline for the deal and indicated that after the "quiet
25 period" (statutorily-mandated period of time after an offering during which the underwriting firms
26 cannot publish research), the analyst would "Raise Rating and Estimates." After the pitch,
27 Deutsche Bank became the lead underwriter. The analyst who was involved in the pitch began

1 covering the company in the U.S. after its U.S. IPO at the same Buy rating that his European
2 counterpart had used prior to the U.S IPO.

3 41. In another example, an analyst sent an e-mail to an issuer stating the analyst would
4 provide bi-monthly research coverage on the issuer “if [Deutsche Bank were] meaningfully
5 included in [the issuer’s] financing activities.” The analyst also stated that she would present the
6 issuer to Deutsche Bank’s sales force once a week and to publish several in-depth reports to send
7 out to Deutsche Bank’s institutional base.

8 42. The foregoing all contributed to Deutsche Bank’s ability to win investment banking
9 deals and receive investment banking fees from such offerings and subsequent investment banking
10 relationships.

11 **D. Deutsche Bank Knew That Research Was An**
12 **Important Factor In Winning Investment Banking Business**

13 43. Deutsche Bank knew that companies expected the firm to commit to provide them with
14 research coverage before they would award the firm investment banking business. For example, in
15 an e-mail from Deutsche Bank’s Asia office, a banker reported that a company told them that “for
16 any future business, [they] had to have research coverage and it had to be from a U.S. analyst ...
17 the lack of coverage continues to be a major problem in our relationship, and we have been
18 categorically assured that none of deal flow will come our way until we make good on our
19 promise”. Thus, in at least some cases, companies often demanded research coverage before
20 selecting an investment banker.

21 44. Indeed, at least one company conditioned payment of its investment banking fee to
22 Deutsche Bank upon receiving research coverage after the transaction. Proxima ASA withheld
23 payment to Deutsche Bank of approximately \$6 million in investment banking fees relating to its
24 merger with another company in 2000 because Deutsche Bank had not published research on the
25 company. After Deutsche Bank subsequently issued a September 21, 2001 research report on the
26 company, the fee was paid.

1 45. In some instances, Deutsche Bank analysts also internally suggested conditioning the
2 continuation of research coverage upon whether the company gave Deutsche Bank its investment
3 banking business. One analyst e-mailed the director of research in April 2000 and asked whether
4 he should tell a company whom he believed had misled him about its earnings report that he would
5 drop coverage, unless they brought their recently announced financing transaction to Deutsche
6 Bank. The director of research responded, "I think that is EXACLTY [sic] what you should do."
7 The firm ultimately did not drop coverage.

8 **III. IN CERTAIN INSTANCES, THE FIRM PUBLISHED**
9 **EXAGGERATED OR UNWARRANTED RESEARCH**

10 46. In some instances, Deutsche Bank analysts gave advice to institutional clients or others
11 that conflicted with their published ratings on particular stocks, thus indicating that in those
12 instances, Deutsche Bank published research that was exaggerated, unwarranted, or unreasonable.

13 47. In the spring of 2001, one of Deutsche Bank's analysts met with a large institutional
14 client of the firm to discuss the stocks that analyst covered. One of those stocks was Oracle, on
15 which the analyst had Buy recommendations in his published research on March 1, 2001, March
16 15, 2001, and April 30, 2001. After meeting with the analyst in the spring of 2001, the institutional
17 investor placed an order with Deutsche Bank to sell more than a million shares of its position in the
18 stock. Immediately after the sale, the Deutsche Bank institutional salesperson responsible for the
19 account sent an e-mail to the director of research, commending the analyst's performance and
20 stating that the client would be sending its *Institutional Investor* votes to the analyst. (Subscribers
21 vote for analysts that have provided information in an annual poll of the most influential research
22 analysts conducted by *Institutional Investor* magazine.) Other institutional salespeople also
23 commented about the analyst's helpfulness to them, stating that he had put a "great sell on Oracle."

24 48. In another example, an analyst in the software application sector e-mailed an
25 investment banker in April 2001 on another stock he covered, Eprise Corp., with a "request to drop
26 coverage," stating that the "stock continues to trade below \$1 and these guys are permanent toast."

1 The analyst had a January 5, 2001 Market Perform rating on the stock at the time.

2 49. In April 2002, an analyst communicated to an executive officer of Deutsche Bank's
3 investment banking client, Getty Images, Inc., about the price target he had given the company in
4 and April 5, 2002 report. He told the executive not to worry about his current price target, because
5 he would consider raising it at another time:

6 I thought my approach was appropriately supportive of my favorite company [the
7 client], but still realistic.... My best guess is the stock stays in a trading range
8 pending another quarter's evidence of [the client's] superior operating skills, [sic]
9 leveraged by further improvements in the ad market. This leaves me room to boost
10 the target price in conjunction with future increases in the earnings estimates [sic].
11 I certainly wouldn't want to put you under any near-term pressure by raising the bar
12 too high. After all, I'm only thinking about you!

13 **IV. DEUTSCHE BANK RECEIVED AND MADE PAYMENTS FOR**
14 **SERVICES THAT INCLUDED THE PROVISION OF RESEARCH**

15 50. During the relevant time period, Deutsche Bank received over \$1 million from other
16 investment banks for services that included research coverage of those firms' banking clients. In
17 addition, it directed payments of more than \$10 million to other brokers for services that included
18 research coverage of Deutsche Bank's banking clients. These payments were made from the
19 underwriting proceeds of the transaction, and in certain instances, were directed by the issuers.

20 51. In a January 2000 e-mail discussing the "norm" on Wall Street, a banker stated that for
21 transactions above \$75 million, "there are plenty of gross spread dollars to be allocated for future
22 research coverage in the management fee."

23 **A. Deutsche Bank Received Payments for Research**

24 52. During the relevant time period, Deutsche Bank received payments on at least four
25 deals for which it was not the lead or co-lead manager. Internal documents at the firm reflect that
26 these payments were made for research.

27 53. For example, in the spring of 2001, Deutsche Bank was covering Transkaryotic
28 Therapeutics, Inc. with a "Strong Buy" and was pitching for the company's investment banking
business. When the company selected another investment bank, the research analyst called
Transkaryotic and expressed his displeasure that Deutsche Bank had not been selected to do the

1 deal. The analyst told the company that he had spent his morning on the phone supporting the deal
2 and that it was the analyst's upgrade of the stock from a Market Perform to a Strong Buy several
3 weeks before that had increased the stock price and helped make the deal a success. The company
4 directed that Deutsche Bank receive a payment of \$300,000 from the underwriting proceeds. The
5 analyst recorded in his self-evaluation form for that year that the firm had been "paid for our
6 research" on this and one other deal.

7 54. Similarly, in October 1999, a company called Emisphere, which was not being covered
8 by Deutsche Bank, decided to do a follow-on offering. Although Deutsche Bank did not
9 participate in the deal, it received an \$87,500 payment from the proceeds of the deal. The deal
10 sheet and the \$87,500 check from the lead manager both reflected that the payment was made "for
11 research." In fact, the deal sheet specifically stated "Not in Deal / Received \$87500.00 for
12 research." Moreover, a contemporaneous internal e-mail from Deutsche Bank states that "[t]here
13 was talk about us participating in the deal but b/c of the small size, proposed economics, etc we
14 opted to pass. However, we did agree to pick up research coverage and a[s] result we will be
15 getting the sales credit on 10% of the institutional pot." (During an offering, whenever the sale of
16 shares to large institutional clients cannot be attributed to the selling efforts of any one firm, the
17 commissions for the sales are placed into an "institutional pot." The credits are then divided
18 among the firms as selling concessions). Deutsche Bank initiated research coverage of Emisphere
19 with a Buy recommendation on November 17, 1999, after the end of the quiet period. The research
20 report did not disclose the \$87,500 payment.

21 55. Deutsche Bank also received a payment of \$150,000 in March 2000 for research on
22 United Therapeutics, Inc. and a payment of \$375,764 in December 2001 for covering Trimeris, Inc.

23 56. In each of the four instances where Deutsche Bank received a payment for research,
24 Deutsche Bank was not a member of the underwriting syndicate. (In several of the instances,
25 Deutsche Bank was considered a member of the "selling group;" however, the selling group
26 members do not retain any underwriting risk and Deutsche Bank did not acquire or sell any shares
27 in these offerings). The payments were made from the underwriting proceeds of the offerings. The

1 payments totaled over \$900,000.

2 57. In each instance, Deutsche Bank issued research reports recommending the stocks of
3 the issuers involved in the offerings. Emisphere was initiated at a “Buy”; the ratings of the three
4 stocks already covered by Deutsche Bank did not change. However, in all four instances, Deutsche
5 Bank failed to disclose in its research reports that the firm had received the payments and the
6 source and amount of the payments.

7 **B. Deutsche Bank Made Payments To Other Firms for Coverage**

8 58. During the relevant period, Deutsche Bank made payments to other investment banking
9 firms to have them, among other things, provide research coverage of Deutsche Bank’s investment
10 banking clients. A senior executive in Deutsche Bank’s Equity Capital Markets department
11 testified that, during the relevant time period, these payments were made on “one out of four” deals
12 for which Deutsche Bank was the lead or co-lead manager.

13 59. Although in many instances the payments were made at the issuer’s direction, Deutsche
14 Bank actively participated in the process. In its pitches for the business, Deutsche Bank advised
15 the issuer that it would select members for the underwriting syndicate based upon that firm’s
16 ability to provide research coverage. In at least one instance, Deutsche Bank advised its client that
17 it would be possible to “attract specific additional Research Analysts” by offering them free
18 retention shares.

19 60. During the relevant period, Deutsche Bank made these payments in at least 25 offerings
20 where it was the lead or co-lead manager. The payments, which came from the underwriting
21 proceeds, were made to at least 35 other broker-dealers who either were not part of the
22 underwriting syndicate or who received a payment significantly in excess of their underwriting fee
23 on the transaction. In many of these instances, Deutsche Bank’s internal e-mail and other internal
24 documents recorded these payments as “research payments.”

25 61. For example, Deutsche Bank was the lead manager for U.S. Aggregates’ follow-on
26 offering of 5.475 million shares of stock in August 1999. The dealer book (the document used by
27 Deutsche Bank to track firms’ involvement in the deal) noted under one firm’s name:

28 CONSENT ORDER

1 “RESEARCH FOR \$\$ ADDL 100M SHARES OF CREDIT.” The dealer book made similar
2 notations for other firms.

3 62. Similarly, Deutsche Bank was the lead manager for Endwave Corporation’s follow-on
4 offering of 6.9 million shares of stock in October 2000. Deutsche Bank’s dealer book reflected that
5 another firm would receive payment as part of the deal and notes that the Deutsche Bank deal
6 captain “spoke to Jan – their going rate is \$100,000 – no less for research, she will follow with []
7 analyst...” On January 12, 2001, Deutsche Bank sent a \$100,000 check to the firm. The
8 accompanying statement reflected that the payment was a “Research Payment.”

9 63. Although not all of the firms appear to have issued research after receiving the
10 payments, internal e-mails indicate that Deutsche Bank policed the other firms to ensure that
11 research was in fact issued. For example, in connection with Deutsche Bank’s lead-managed
12 follow-on offering for Align Technologies, Inc. in January 2001, one of the deal captains wrote,
13 “They [another firm] owe us on a past deal for which they promised and got paid on research but
14 lost the analyst prior to rollout. They are picking this up regardless with no fees associated.”

15 64. In all, Deutsche Bank made payments totaling over \$10 million on at least 50 deals in
16 order to have other firms provide research coverage of Deutsche Bank’s investment banking
17 clients. These payments were not disclosed in the prospectus or other publicly available
18 documents disclosing the terms of the underwriting deal. Deutsche Bank did not take steps to
19 ensure that these firms disclosed in their research reports that they had been paid to issue research.
20 Further, where applicable, Deutsche Bank did not disclose or cause to be disclosed in the offering
21 documents or elsewhere the details of these payments.

22 **V. DEUTSCHE BANK FAILED TO REASONABLY SUPERVISE**
23 **RESEARCH ANALYSTS’ ACTIVITIES AND TO ESTABLISH**
24 **PROCEDURES TO GUARD AGAINST IMPROPER CONDUCT**

25 65. Deutsche Bank failed to establish and maintain adequate policies and procedures to
26 ensure the objectivity and independence of its research reports and recommendations. Although
27 Deutsche Bank had written policies governing the preparation and distribution of research during

1 the relevant period, these policies were not reasonably designed to prevent or manage conflicts of
2 interest that existed between research and investment banking.

3 66. In addition, at least several analysts were unfamiliar with or did not comply with the
4 policies. Deutsche Bank's written policies in effect after May 2001 prohibited research analysts
5 from sending issuers draft reports containing the analysts' recommendations and price targets. At
6 least one analyst was unaware of this policy; other analysts admitted that even though they knew of
7 the policy, they violated it by sending draft reports with recommendations and price targets to
8 issuers for comment before the reports were published.

9 **VI. DEUTSCHE BANK FAILED TO PROMPTLY**
10 **PRODUCE ALL ELECTRONIC MAIL**

11 67. In April 2002, state and federal regulators requested that Deutsche Bank produce all e-
12 mail for a two-year period for certain employees in its research and investment banking
13 departments. At the same time, Deutsche Bank was asked not to delete e-mail or overwrite e-mail
14 backup tapes. Deutsche Bank agreed to the requests, sent out such instructions, and began
15 producing e-mail. State regulators joined in the investigation in coordination with the federal
16 regulators.

17 68. In their review of Deutsche Bank's production, the SEC and California state regulators
18 noticed apparent discrepancies in the volume of e-mail that was being produced for various
19 individuals. The regulators also believed that anticipated responses to certain e-mails were missing
20 and the production appeared to be incomplete. These discrepancies were immediately brought to
21 the attention of Deutsche Bank. Deutsche Bank repeatedly assured the regulators that its e-mail
22 production was complete. Responding to the issues raised by the regulators, the firm stated that the
23 variance in the volume of emails for particular individuals was attributable to a) individual
24 practices (that is, that some people received and kept more e-mail than others), b) the fact that
25 different entities that now comprised Deutsche Bank had differing historical e-mail retention
26 practices, or c) Deutsche Bank's failure to maintain all of its e-mail for the required three-year time
27 period, for which the firm had been fined \$1.65 million in joint actions by the SEC, the NASD, and

1 the NYSE in December 2002.

2 69. The regulators continued to examine the production discrepancies. One discrepancy
3 involved Deutsche Bank's production of e-mails for only twelve of the twenty-four months for the
4 e-mail server located in its San Francisco office. Ultimately, on the eve of the Global Settlement in
5 April 2003, Deutsche Bank, based on inquiries by California state regulators, determined that one
6 or more e-mail backup tapes had not been restored to retrieve available e-mail, and so informed the
7 regulators. Deutsche Bank subsequently learned, and informed the regulators, that in numerous
8 instances, their production retrieval process had failed.

9 70. Deutsche Bank failed to ensure that it was producing all responsive e-mail. Deutsche
10 Bank relied upon the statements of low level supervisory and information technology personnel
11 that all available e-mail had been produced, without confirming that such assurances were accurate.
12 The information technology personnel who retrieved the email data from backup tapes and other
13 storage media did not have sufficient guidance and had not been adequately trained on how to
14 respond to regulatory or other requests for e-mail. Despite Deutsche Bank's assurances to
15 regulators that e-mail would not be overwritten or deleted, a number of electronic backup tapes
16 containing e-mail were discarded during the production period by an employee who believed that
17 they contained no recoverable e-mail. Internal or external third parties with forensic data retrieval
18 expertise were not consulted to confirm that the tapes were corrupted and to assess whether
19 restoration was possible using different technology.

20 71. In certain instances, Deutsche Bank neglected to restore backup tapes to determine
21 whether they contained responsive e-mail. In other instances, Deutsche Bank incorrectly identified
22 as "unavailable" backup tapes that were, in fact, available or in offsite storage facilities, and also
23 stated that certain tapes had been overwritten when that turned out not to be the case. Deutsche
24 Bank also discovered, after continued questioning by the regulators, that a large volume of e-mail
25 still existed on file servers, an offline help desk server, and backup tapes that had been scrapped but
26 not yet overwritten. Once the tapes were restored and data retrieved from them, Deutsche Bank
27 found certain e-mail for analysts for whom Deutsche Bank had previously stated that no e-mail

1 existed. After Deutsche Bank had informed the regulators that it was close to completing its
2 production, Deutsche Bank determined that it had the ability to retrieve certain previously-deleted
3 e-mail which had not been retrieved by Deutsche Bank's original restoration process.

4 72. Deutsche Bank's inability to reliably locate and produce e-mail in response to
5 regulatory requests and subpoenas, which resulted from a lack of guidance to information
6 technology personnel, a lack of adequate procedures, and a lack of proper supervision, delayed the
7 completion of the investigation into analyst conflicts of interest at Deutsche Bank by over a year.
8 As the investigation continued, the regulators were forced to invest considerable time and resources
9 to probe Deutsche Bank's e-mail production failures, including taking testimony from numerous
10 information technology personnel. In response to the problems that were identified by the
11 regulators in April 2003, Deutsche Bank took steps to ensure that the previously overlooked e-mail
12 was restored and produced to regulators, and revised its procedures and protocol for gathering and
13 producing historical e-mail. Ultimately, however, the failure of Deutsche Bank to fully and
14 completely respond to the initial requests of the regulators significantly delayed the completion of
15 the investigation for an unreasonable length of time.

16 73. Over the course of the following year, Deutsche Bank produced an additional 227,000
17 e-mail -- more than three times the volume that it produced during the investigation as of
18 December 2002.

19 74. By failing to timely produce e-mail, Deutsche Bank breached its obligation to comply
20 with a reasonable regulatory request for documents that it is required by law to maintain and
21 produce for inspection to the Commission staff and state regulators.

22 **VII. CONCLUSIONS OF LAW**

23 1. The Securities Division, Department of Financial Institutions, has jurisdiction over
24 this matter pursuant to the Securities Act of Washington, RCW 21.20.

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26 2. Deutsche Bank failed to ensure that analysts who issued research were adequately
27 insulated from pressures and influences from covered companies and investment banking.

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Such failure constitutes a dishonest or unethical practice in the securities industry which is a ground for imposition of a fine upon Deutsche Bank pursuant to RCW 21.20.110(1)(g).

4. Deutsche Bank failed to reasonably supervise its employees to ensure that its analysts who issued research were adequately insulated from pressures and influences from covered companies and investment banking. Such failure constitutes grounds for the imposition of a fine upon Deutsche Bank pursuant to RCW 21.20.110(j).

The Securities Administrator finds the following relief appropriate and in the public interest.

VIII. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Deutsche Bank’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 Securities Division, Department of Financial Institutions and any other action that the Securities Administrator could commence under Securities Act of Washington on behalf of the state of Washington as it relates to certain research practices at Deutsche Bank described herein, provided, however, that the Securities Division, Department of Financial Institutions, may enforce any claims against defendant arising from or relating to any violation of the “Order” provisions herein.

2. Respondent Deutsche Bank will CEASE AND DESIST from engaging in acts in violation of the Securities Act of Washington in connection with the research practices referenced in this Order and will comply with the undertakings of Addendum A, incorporated herein by reference.

3. As a result of the Findings of Fact and Conclusions of Law contained in this Order, Deutsche Bank shall pay a total amount of \$87,500,000.00. This total amount shall be paid as

1 specified in the final judgment in the related action by the SEC against Deutsche Bank (“SEC Final
2 Judgment”) as follows:

- 3 a) \$28,750,000 to the states (50 states, plus the District of Columbia and Puerto Rico),
4 which amount includes the states’ portion of the penalty for violating Section 17(b)
5 of the Exchange Act as specified in the SEC Final Judgment and related state law
6 (Deutsche Bank’s offer to the state securities regulators hereinafter shall be called
7 the “state settlement offer”). Upon execution of this Order, Deutsche Bank shall
8 pay the sum of \$522,271 of this amount to the Securities Division, Department of
9 Financial Institutions as a fine pursuant to RCW 21.20.110(4). The state of
10 Washington payment shall be made to the Washington State Treasurer, delivered to
11 Securities Administrator, Department of Financial Institutions, PO Box 9033,
12 Olympia, Washington 98507-9033, and, submitted with a cover letter that identifies
13 this matter by caption, order number, and case number and identifying the amount
14 as an administrative fine. The total amount to be paid by Deutsche Bank to state
15 securities regulators pursuant to the state settlement offer may be reduced due to the
16 decision of any state securities regulator not to accept the state settlement offer. In
17 the event another state securities regulator determines not to accept Deutsche
18 Bank’s state settlement offer, the total amount of the state of Washington payment
19 shall not be affected, and shall remain at \$522,271;
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21 b) \$25,000,000 as disgorgement of commissions, fees and other monies as specified in
22 the SEC Final Judgment;
23
24 c) \$25,000,000, to be used for the procurement of independent research, as described
25 in the SEC Final Judgment;
26
27 d) \$5,000,000, to be used for investor education, as described in Addendum A,
28 incorporated by reference herein;

1 e) \$3,750,000 to the SEC, as a penalty for violating Section 17(b) of the Exchange Act,
2 as specified in the SEC Final Judgment.

3 4. Deutsche Bank agrees that it shall not seek or accept, directly or indirectly,
4 reimbursement or indemnification, including, but not limited to payment made pursuant to any
5 insurance policy, with regard to all penalty amounts that Deutsche Bank shall pay pursuant to this
6 Order or Section II of the SEC Final Judgment, regardless of whether such penalty amounts or any
7 part thereof are added to the Distribution Fund Account referred to in the SEC Final Judgment or
8 otherwise used for the benefit of investors. Deutsche Bank further agrees that it shall not claim,
9 assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any
10 penalty amounts that Deutsche Bank shall pay pursuant to this Order or Section II of the SEC Final
11 Judgment, regardless of whether such penalty amounts or any part thereof are added to the
12 Distribution Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit
13 of investors. Deutsche Bank understands and acknowledges that these provisions are not intended
14 to imply that the Securities Division, Department of Financial Institutions, would agree that any
15 other amounts Deutsche Bank shall pay pursuant to the SEC Final Judgment may be reimbursed or
16 indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be
17 the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

18 5. If payment is not made by Deutsche Bank or if Deutsche Bank defaults in any of its
19 obligations set forth in this Order, the Securities Administrator may vacate this Order, at its sole
20 discretion, upon 10 days notice to Deutsche Bank and without opportunity for administrative
21 hearing and Deutsche Bank agrees that any statute of limitations applicable to the subject of the
22 Investigation and any claims arising from or relating thereto are tolled from and after the date of
23 this Order.

24 6. This Order and any dispute related thereto shall be construed and enforced in
25 accordance with, and governed by, the laws of the state of Washington without regard to any
26 choice of law principles.
27

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

7 8. The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of
8 Acceptance, Waiver and Consent, this Order and the order of any other State in related proceedings
9 against Deutsche Bank (collectively, the “Orders”) shall not disqualify any Covered Person from
10 any business that they otherwise are qualified, licensed or permitted to perform under the
11 applicable law of the state of Washington and any disqualifications from relying upon this state’s
12 registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

13 9. The Orders shall not disqualify Deutsche Bank from any business that they
14 otherwise are qualified or licensed to perform under applicable state law.

15 10. For any person or entity not a party to this Order, this Order does not limit or create
16 any private rights or remedies against Deutsche Bank including, without limitation, the use of any
17 e-mails or other documents of Deutsche Bank or of others regarding research practices, or limit or
18 create liability of Deutsche Bank, or limit or create defenses of Deutsche Bank to any claims.

19 11. Nothing herein shall preclude state of Washington, its departments, agencies,
20 boards, commissions, authorities, political subdivisions and corporations, other than the Securities
21 Administrator and only to the extent set forth in paragraph 1 above, (collectively, “State Entities”)
22 and the officers, agents or employees of State Entities from asserting any claims, causes of action,
23 or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal,
24 or injunctive relief against Deutsche Bank in connection with securities research analysts’ conflicts
25 of interest and investment banking business practices at Deutsche Bank.
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