

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,
450 Fifth Street, N.W.
Washington, D.C. 20549-0801,

Plaintiff,

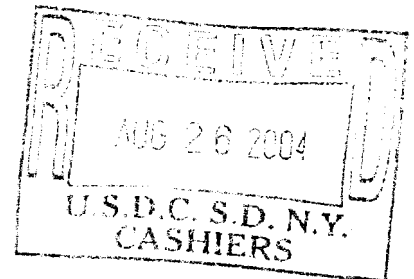
– against –

DEUTSCHE BANK SECURITIES INC.,
31 West 52nd Street
New York, New York 10019,

Defendant.

04 CV 06909
Civil Action No.

COMPLAINT



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

NATURE OF THE ACTION

1. The Commission brings this action against defendant Deutsche Bank Securities Inc. ("Deutsche Bank" or "Defendant") to redress Deutsche Bank's violations of the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), and rules of NASD Inc. ("NASD") and the New York Stock Exchange, Inc. ("NYSE").

2. From July 1999 through June 2001 (the "relevant period"), Deutsche Bank 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. Deutsche Bank failed to manage these conflicts in an adequate manner. During this time period, Deutsche Bank offered research coverage in order to gain investment banking business and receive investment banking fees. It also received over \$1 million from other investment banks to provide research coverage of their investment banking clients, and made

payments of approximately \$10 million to other securities firms primarily for research coverage for its investment banking clients. In addition, Deutsche Bank compensated its research analysts based in part upon their contributions to Deutsche Bank's investment banking business. These relationships and activities constituted substantial conflicts of interest for Deutsche Bank's research analysts.

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

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

5. By its conduct, Deutsche Bank violated Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)], Section 17(b) of the Exchange Act [15 U.S.C. § 78q(b)], NASD Rules 2110, 2210(d)(1), 2210(d)(2), and 3010, and NYSE Rules 342, 401, 472, 476(a)(6), and 476(a)(11).

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter 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].

7. Deutsche Bank, directly or indirectly, used the means and instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection with the acts, practices, and courses of business alleged herein.

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

DEFENDANT

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

FACTUAL ALLEGATIONS

I. BACKGROUND

A. The Role of Research Analysts at Deutsche Bank

10. Deutsche Bank has a securities research department called the "equity research department," which provides its investment clients and the public with research reports on certain public companies. Research analysts at Deutsche Bank are generally assigned to review

the investment outlook of specific public companies within a certain industry or sector, such as technology or biosciences. This is called “covering” a company’s stock. In their research reports, analysts typically review the performance of the covered companies, evaluate their business prospects, and provide analysis and projections regarding the future prospects of the company. They also provide a rating or recommendation as to whether the company presents a good investment opportunity, and often provide a price target (the market price at which the analyst expects the stock to trade within a given time).

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

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

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

14. Deutsche Bank distributed its analysts' research reports internally to various departments at the firm, made the reports available to its institutional and retail customers, and disseminated the reports to subscription services such as First Call and Bloomberg. The firm's customers received the research reports through the firm's website and also through electronic mail or postal mail if they were on the firm's mailing lists. Analysts' recommendations were also reported in the U.S. financial news media.

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

B. Investment Banking at Deutsche Bank

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

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

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

II. DEUTSCHE BANK’S RESEARCH STRUCTURE CONTAINED CONFLICTS OF INTEREST

19. Because Deutsche Bank did not charge for its research, the Americas Equity Research Department at Deutsche Bank was a “cost center.” Its costs were substantially funded by the firm’s departments responsible for institutional clients and investment banking. During the relevant period, the equities department funded 50% of the research department’s expenses, the investment banking department funded 43%, and the retail department funded 7%.

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

A. Analysts' Compensation Was Determined in Part by the Analysts' Contribution to Investment Banking Revenues

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

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

23. Analysts received “credit” for all investment banking deals in their sector (regardless whether they worked on the deal), as well as for deals outside their sector to which they contributed personally. This amount was then adjusted upward or downward by 25-30% based upon the reviews provided by the investment bankers who worked with the analyst. Thus, if an analyst was helpful to investment bankers in the analyst’s sector by, for example, generating deals for his sector, the analyst could get a high rating from the investment banker and thus increase his rating in the matrix and, potentially, the size of the analyst’s bonus.

24. Investment bankers rated analysts based on a scale of 1 (“Analyst Extremely Important To A Majority Of Investment Banking Revenue. Without The Analyst, Our Revenue Would Have Been More Than 50% Below What We Generated.”) to 5 (“Analyst Had A Negative Impact On Investment Banking Revenue.”). Analysts at the top of the matrix – and

thus who received the largest bonuses – typically received all 1’s or 2’s from investment bankers, as well as scored highly in other areas of the matrix.

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

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

- (a) “Won two lead managed IPO mandates ... Won one secondary offering ... as a result of relationship with management team (our investment bankers did not have any previous relationship with the Company). ... DBAB generated a \$400K (roughly) fee. Participated in winning mandate on ... convertible debt offering despite previous ... analyst leaving DBAB. ... DBAB earned a \$10M (roughly) fee.... My previous management relationships allowed the 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 invited to pitch ... the \$2-3 billion ... IPO; I started the ball rolling.”

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

28. Research management based promotion decisions in part upon the analyst's assistance to the firm's investment banking business.

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

B. Investment Banking Interests Influenced Coverage Decisions

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

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

32. Analysts also routinely identified to their investment banking counterparts private companies that might go public. Often, it was the research analyst's relationship with the company that convinced the company to use Deutsche Bank's investment banking services. If the company did indeed use Deutsche Bank for its investment banking business, the analyst would typically cover the company for Deutsche Bank. The fact that the analyst had originated

Deutsche Bank's investment banking transaction with the company that he covered presented a potential conflict of interest.

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

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

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

36. Similarly, in March 2000, Deutsche Bank had a Strong Buy recommendation on the stock of Peregrine Systems. At the time, the stock was trading at over \$70. In April 2000, although the stock had dropped to \$24.50, Deutsche Bank maintained its Strong Buy recommendation. Deutsche Bank continued its Strong Buy recommendation until the stock price hit \$0.24 in September 2002.

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

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

38. During the relevant period, Deutsche Bank implicitly promised in its pitchbooks that its research analysts would cover the company if the company gave it investment banking business. Deutsche Bank pitchbooks spoke of the firm's "commitment to research" and to the company, stating that Deutsche Bank's "commitment doesn't end with the IPO" and that Deutsche Bank would "be [the company's] leading advocate." Analysts prepared one section of the pitchbooks, entitled "Research Positioning." Deutsche Bank analysts typically prepared this section after completing some due diligence on the company and discussed in the section how the analyst would market the company to investors in research reports. Generally, the research positioning section of the pitchbook made a variety of positive statements about the company. For example, the pitchbook would sometimes state that Deutsche Bank analysts would promote the company's "compelling business model," its action in "rebuilding supply chains to provide

superior value to producers and customers,” or its “huge market opportunity.” Pitchbooks described analysts as the “key ‘Champion’” of the pitched companies.

39. In other pitchbooks, positive research coverage was suggested by reference to Deutsche Bank’s positive coverage of other companies. Deutsche Bank described how the analyst had covered another company – and how the analyst’s favorable ratings of the stock corresponded with the stock’s rise in price. For example, the December 11, 2001 pitchbook for LeapFrog Enterprises, Inc. (“LeapFrog”) identified the analyst’s reports on another company – his buy and strong buy ratings of that company in frequent research reports – and graphed them against the stock price of the company to suggest that the analyst’s ratings and reports assisted in the increase in the stock’s price. Several months later, Deutsche Bank was selected as a co-manager for LeapFrog and received investment banking fees.

40. Deutsche Bank’s pitchbooks also typically discussed the “research commitment” of the firm, stating that the analyst would engage in various activities in connection with the IPO, including pre-marketing, marketing, initial coverage, ongoing coverage, industry reports, sponsorship of visits, dinners with key investors, and investor presentations. The analyst also assisted the investment bankers in performing due diligence on the company and had a say in whether the firm would participate in the offering. If the analyst did not support the deal, the firm typically would not proceed with the offering.

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

42. It was understood by all parties involved – the analyst, the underwriters, and the issuer – that the analyst would typically speak favorably about the issuer when initiating coverage. Indeed, at least one pitchbook implied that Deutsche Bank would provide favorable coverage. In October 1999, Deutsche Bank marketed a European-based company called Autonomy Corp. for its U.S. IPO. (At the time, Deutsche Bank had an analyst in London covering the company for the European markets.) The pitchbook for Autonomy showed a timeline for the deal and indicated that after the “quiet period” (a period of time after an offering during which the underwriting firms cannot publish research), the analyst would “Raise Rating and Estimates.” After the pitch, Deutsche Bank became the lead underwriter. The analyst who was involved in the pitch began covering the company in the U.S. after its U.S. IPO at the same Buy rating that his European counterpart had used prior to the U.S. IPO.

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

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

D. Deutsche Bank Knew That Research Was An Important Factor in Winning Investment Banking Business

45. Deutsche Bank knew that companies expected the firm to commit to provide them with research coverage before they would award the firm investment banking business. For example, in an e-mail from Deutsche Bank’s Asia office, a banker reported that a company told

him that “for any future business, [they] had to have research coverage and it had to be from a U.S. analyst ... the lack of coverage continues to be a major problem in our relationship, and we have been categorically assured that none of deal flow will come our way until we make good on our promise.” Thus, in at least some cases, companies demanded research coverage before selecting an investment banker.

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

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

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

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

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

50. In another example, an analyst in the software application sector e-mailed an investment banker in April 2001 on another stock he covered, Eprise Corp., with a "request to drop coverage," stating that the "stock continues to trade below \$1 and these guys are permanent toast." The analyst had a January 5, 2001 Market Perform rating on the stock at the time.

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

I thought my approach was appropriately supportive of my favorite company, but still realistic.... My best guess is the stock stays in a trading range pending another quarter's evidence of [the client's] superior operating skills, leveraged by further improvements in the ad market. This leaves me room to boost the target price in conjunction with future increases in the earnings estimates. I certainly

wouldn't want to put you under any near-term pressure by raising the bar too high. After all, I'm only thinking about you!

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

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

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

A. Deutsche Bank Received Payments for Research

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

55. For example, in the spring of 2001, Deutsche Bank was covering Transkaryotic 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 deal. The analyst told the company that he had spent his morning on the phone supporting the deal and that it was the analyst's upgrade of the stock from a Market Perform to a Strong Buy several weeks before that had increased the stock price and helped make the deal a success. The

company directed that Deutsche Bank receive a payment of \$300,000 from the underwriting proceeds. The analyst recorded in his self-evaluation form for that year that the firm had been “paid for our research” on this and one other deal.

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

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

58. In each of the four instances where Deutsche Bank received a payment for research, Deutsche Bank was not a member of the underwriting syndicate. (In several of the instances, Deutsche Bank was considered a member of the “selling group;” however, the selling

group members do not retain any underwriting risk and Deutsche Bank did not acquire or sell any shares in these offerings.) The payments were made from the underwriting proceeds of the offerings. The payments totaled over \$900,000.

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

B. Deutsche Bank Made Payments to Other Firms for Coverage

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

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

62. During the relevant period, Deutsche Bank made these payments in at least 25 offerings where it was the lead or co-lead manager. The payments, which came from the underwriting proceeds, were made to at least 35 other broker-dealers who either were not part of

the underwriting syndicate or who received a payment significantly in excess of their underwriting fee on the transaction. In many of these instances, Deutsche Bank's internal e-mail and other internal documents recorded these payments as "research payments."

63. For example, Deutsche Bank was the lead manager for U.S. Aggregates' follow-on offering of 5.475 million shares of stock in August 1999. The dealer book (the document used by Deutsche Bank to track firms' involvement in the deal) noted under one firm's name: "RESEARCH FOR \$\$ ADDL 100M SHARES OF CREDIT." The dealer book made similar notations for other firms.

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

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

66. In all, Deutsche Bank made payments totaling over \$10 million on at least 50 deals in order to have other firms provide research coverage of Deutsche Bank's investment banking clients. These payments were not disclosed in the prospectus or other publicly available

documents disclosing the terms of the underwriting deal. Deutsche Bank did not take steps to ensure that these firms disclosed in their research reports that they had been paid to issue research. Further, where applicable, Deutsche Bank did not disclose or cause to be disclosed in the offering documents or elsewhere the details of these payments.

V. DEUTSCHE BANK FAILED TO REASONABLY SUPERVISE RESEARCH ANALYSTS' ACTIVITIES AND TO ESTABLISH PROCEDURES TO GUARD AGAINST IMPROPER CONDUCT

67. Deutsche Bank failed to establish and maintain adequate policies and procedures to ensure the objectivity and independence of its research reports and recommendations.

Although Deutsche Bank had written policies governing the preparation and distribution of research during the relevant period, these policies were not reasonably designed to prevent or manage the conflicts of interest that existed between research and investment banking.

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

VI. DEUTSCHE BANK FAILED TO PROMPTLY PRODUCE ALL ELECTRONIC MAIL

69. In April 2002, the Commission's staff and federal regulators requested that Deutsche Bank produce all e-mail for a two-year period for certain employees in its research and investment banking departments. At the same time, Deutsche Bank was asked to not delete e-mail or overwrite e-mail backup tapes. Deutsche Bank agreed to the requests, sent out such

instructions, and began producing e-mail. State regulators joined in the investigation in coordination with the federal regulators.

70. In their review of Deutsche Bank's production, the staff and California state regulators noticed apparent discrepancies in the volume of e-mail that was being produced for various individuals. The regulators also believed that anticipated responses to certain e-mails were missing and the production appeared to be incomplete. These discrepancies were immediately brought to the attention of Deutsche Bank. Deutsche Bank repeatedly assured the regulators that its e-mail production was complete. Responding to the issues raised by the regulators, the firm stated that the variance in the volume of emails for particular individuals was attributable to a) individual practices (that is, that some people received and kept more e-mail than others), b) the fact that different entities that now comprised Deutsche Bank had differing historical e-mail retention practices, or c) Deutsche Bank's failure to maintain all of its e-mail for the required three-year time period, for which the firm had been fined \$1.65 million in joint actions by the Commission, the NASD, and the NYSE in December 2002.

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

72. Deutsche Bank failed to ensure that it was producing all responsive e-mail. Deutsche Bank relied upon the statements of low level supervisory and information technology personnel

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

73. In certain instances, Deutsche Bank neglected to restore backup tapes to determine whether they contained responsive e-mail. In other instances, Deutsche Bank incorrectly identified as "unavailable" backup tapes that were, in fact, available or in offsite storage facilities, and also stated that certain tapes had been overwritten when that turned out not to be the case. Deutsche Bank also discovered, after continued questioning by the regulators, that a large volume of e-mail still existed on file servers, an offline help desk server, and backup tapes that had been scrapped but not yet overwritten. Once the tapes were restored and data retrieved from them, Deutsche Bank found certain e-mail for analysts for whom Deutsche Bank had previously stated that no e-mail existed. After Deutsche Bank had informed the regulators that it was close to completing its production, Deutsche Bank determined that it had the ability to retrieve certain previously-deleted e-mail which had not been retrieved by Deutsche Bank's original restoration process.

74. Deutsche Bank's inability to reliably locate and produce e-mail in response to regulatory requests and subpoenas, which resulted from a lack of guidance to information

technology personnel, a lack of adequate procedures, and a lack of proper supervision, delayed the completion of the investigation into analyst conflicts of interest at Deutsche Bank by over a year. As the investigation continued, the regulators were forced to invest considerable time and resources to probe Deutsche Bank's e-mail production failures, including taking testimony from numerous information technology personnel. In response to the problems that were identified by the regulators in April 2003, Deutsche Bank took steps to ensure that the previously overlooked e-mail was restored and produced to regulators, and revised its procedures and protocol for gathering and producing historical e-mail. Ultimately, however, the failure of Deutsche Bank to fully and completely respond to the initial requests of the regulators significantly delayed the completion of the investigation for an unreasonable length of time.

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

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

FIRST CLAIM FOR RELIEF

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

77. Paragraphs 1-76 are realleged and incorporated by reference.

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

79. 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.”

80. 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.

81. During the relevant period, Deutsche Bank 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. Deutsche Bank failed to manage these conflicts in an adequate or appropriate manner.

82. By reason of the foregoing, Deutsche Bank 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 Payments for Research and Failing to Disclose the Receipt of Such Payments]

83. Paragraphs 1-76 are realleged and incorporated by reference herein.

84. In the offer or sale of securities, Deutsche Bank 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.

85. 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.

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

87. By reason of the foregoing, Deutsche Bank 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 Payments for Research]

88. Paragraphs 1-76 are realleged and incorporated by reference herein.

89. As alleged above, Deutsche Bank made payments for research to other broker-dealers not involved in an underwriting transaction when Deutsche Bank knew that these payments were made, at least in part, for research coverage, and failed to disclose or cause to be disclosed in offering documents or elsewhere the fact of such payments.

90. By reason of the foregoing, Deutsche Bank 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]

91. Paragraphs 1-76 and 78-80 are realleged and incorporated by reference herein.

92. 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.

93. As alleged above, in several instances Deutsche Bank 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.

94. By reason of the foregoing, Deutsche Bank violated NASD Conduct Rules 2110, 2210(d)(1), and 2210(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]

95. Paragraphs 1-76 are realleged and incorporated by reference herein.

96. 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.

97. 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.”

98. Deutsche Bank failed to establish and maintain adequate procedures over research analysts to prevent or manage conflicts of interest.

99. By reason of the foregoing, Deutsche Bank violated NASD Conduct Rule 3010 and NYSE Rule 342.

SIXTH CLAIM FOR RELIEF

[Violation of Section 17(b) of the Exchange Act and NASD and NYSE Rules by failing to timely produce records]

100. Paragraphs 1-76 and 78 are realleged and incorporated by reference herein.

101. Section 17(b) of the Exchange Act provides, in pertinent part, that “[a]ll records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.”

102. NYSE Rule 476(a)(11) prohibits member organizations, among other things, from refusing or failing to comply with a request to submit its books and records.

103. Deutsche Bank failed to timely produce e-mail that the Commission had sought to examine during its investigation of Deutsche Bank’s research and investment banking practices.

104. By reason of the foregoing, Deutsche Bank violated Section 17(b) of the Exchange Act, NASD Rule 2110, and NYSE Rule 476(a)(11).

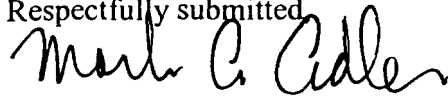
PRAYER FOR RELIEF

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)], Section 17(b) of the Exchange Act [15 U.S.C. § 78q(b)], NASD Conduct Rules 2110, 2210(d)(1), 2210(d)(2), and 3010, and NYSE Rules 342, 401, 472, 476(a)(6), and 476(a)(11);

- 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,



Mark A. Adler (8703)

James A. Meyers (JM 5231)

Antonia Chion (AC 9522)

Yuri B. Zelinsky

Kara Novaco Brockmeyer

Tracy Linkins Price

SECURITIES AND EXCHANGE COMMISSION

450 Fifth Street, N.W.

Washington, D.C. 20549-0911

(202) 942-4567 (Chion)

(202) 942-9636 (Chion fax)

Date: *August 25, 2004*

Attorneys for Plaintiff