

section 9(a) as described in greater detail in the application.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It Is Hereby Ordered*, pursuant to section 9(c) of the Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunctions, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 31, 2005.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26238; 812-12965]

### U.S. Bancorp Piper Jaffray Inc., et al.; Notice of Application and Temporary Order

October 31, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

**SUMMARY OF APPLICATION:** Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against U.S. Bancorp Piper

Jaffray Inc. ("Piper") on October 31, 2003 by the U.S. District Court for the Southern District of New York (the "Federal Injunction"), until the earlier of the date the Commission takes action on an application for a permanent order, or two years from the date of the Federal Injunction. Applicants have requested a permanent order.

**APPLICANTS:** Piper, U.S. Bancorp Asset Management, Inc. and Quasar Distributors, LLC (together, the "Applicants").<sup>1</sup>

**FILING DATES:** The application was filed on April 28, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice. Applicants have also agreed to file amendments to the application reflecting the issuance of each State Injunction (as defined below).

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Joseph D. Edmondson, Jr., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

**FOR FURTHER INFORMATION CONTACT:** Stacy L. Fuller, Senior Counsel, or Annette M. Capretta, Branch Chief, at 202-942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (telephone 202-942-8090).

<sup>1</sup> Applicants request that any relief granted pursuant to the application also apply to any other company of which Piper is or hereafter becomes an affiliated person (included in the term Applicants).

### Applicants' Representations

1. Piper, a Delaware corporation, is a full service investment banking firm, engaged in securities underwriting, sales and trading, investment banking, financial advisory services, and investment research services. Certain Applicants serve as investment adviser or subadviser for one or more registered investment companies ("Funds"). Certain Applicants act as the depositor or principal underwriter for Funds.

2. On October 31, 2003, the U.S. District Court for the Southern District of New York entered the Federal Injunction against Piper in a matter brought by the Commission.<sup>2</sup> The Commission alleged in the complaint ("Complaint") that Piper violated section 17(b) of the Securities Act of 1933 ("Securities Act"), certain Conduct Rules of the National Association of Securities Dealers ("NASD") and Rules of the New York Stock Exchange ("NYSE") (the NASD Conduct Rules and NYSE Rules together, the "Exchange Rules") by engaging in acts and practices that created or maintained inappropriate influence by Piper's investment banking business (the "Investment Banking Department") over the research analysts in Piper's research department (the "Research Department"). The Federal Injunction enjoined Piper directly or through its officers, directors, agents and employees, from violating section 17(b) of the Securities Act and the specific rules cited in the Complaint. Without admitting or denying the allegations in the Complaint, Piper consented to the entry of the Federal Injunction as well as the payment of disgorgement and penalties and other equitable relief, including undertakings by Piper to adopt and implement policies and procedures relating to certain research activities. Applicants state that Piper expects to enter into settlement agreements relating to the activities referred to in the Complaint with certain state and territorial agencies which may result in an injunction by a court of competent jurisdiction that is based on the same conduct and the same facts as the Complaint (each, a "State Injunction," and, together with the Federal Injunction, the "Injunctions"). Applicants request that this application cover any disqualifications of the Applicants under section 9(a) resulting from the Injunctions.

<sup>2</sup> Securities and Exchange Commission v. U.S. Bancorp Piper Jaffray Inc., 03 CV 2942 (WHP) (S.D.N.Y., filed April 28, 2003).

### Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust ("UIT") or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that Piper is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants further state that the entry of the Injunctions would result in Applicants being subject to the disqualification provisions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunctions did not involve any of the Applicants acting in the capacity of investment adviser, depositor or principal underwriter for a Fund. Applicants state that the Complaint did not expressly reference the conduct of any current or former employee of any of the Applicants,<sup>3</sup>

<sup>3</sup> Applicants state that the former head of the Research Department whose activities are generally

who is or was involved in providing advisory, sub-advisory or underwriting services to the Funds advised or underwritten by Applicants.<sup>4</sup> While the Applicants' portfolio managers had access to research reports issued by the Research Department, there is no indication that the portfolio managers relied on these research reports more than any other data that would have been considered by the portfolio managers in making investment decisions for the Funds. Although some of the Funds held securities in their portfolios at the time that Piper issued research reports concerning the issuers of such securities, as far as Applicants are aware, none of the officers, portfolio managers, or any other investment personnel employed by the Applicants made any investment decisions based on any non-public information relating to the conduct underlying the Final Judgment. In addition, Piper and USBAM have policies and procedures, which were in effect at the time of the conduct described in the Complaint, which prohibit (a) prepublication disclosure of research opinions, (b) disclosure of certain information concerning investment banking transactions prior to public announcement, and (c) trading based on material non-public information. Each of the Applicants that serve as an investment adviser or sub-adviser to the Funds also has adopted policies regarding information barriers (the "Policies") designed to protect the Funds from any conflict of interest that may arise between portfolio managers and other employees of Piper. The Policies restrict communications between portfolio managers and certain employees of Piper.

5. The Applicants will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors or trustees of each Fund (each, a "Board"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund, and their independent legal counsel, if any, regarding the Federal Injunction, any impact on the Funds, and this

referred to in the Complaint is now the chief executive officer of USBAM.

<sup>4</sup> The Complaint refers to general practices regarding the relationship between the Investment Banking and Research Departments. It is possible that one or more current or former officers of USBAM or Quasar, other than the individual discussed in footnote 3, who is or was involved in providing advisory, subadvisory or underwriting services to the Funds was at some time an officer or employee of the Investment Banking or Research Department.

application.<sup>5</sup> The Applicants will provide the Boards with all information concerning the Injunctions and this application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants state that the inability to continue providing advisory services to the Funds and the inability to continue serving as principal underwriter to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establish an expertise in advising and distributing Funds. Applicants state that no Applicant has previously applied for an exemption pursuant to section 9(c) of the Act.

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By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</sup> Applicants will advise the Boards of any State Injunctions that are issued.