

NOV 10 2003

BEFORE THE STATE AUDITOR
AND COMMISSIONER OF SECURITIES
HELENA, MONTANA

IN THE MATTER OF:)	CASE NO. I-02-05-01-075
U.S. Bancorp Piper Jaffray Inc.; Thomas J.)	
O'Neill, Robert English, Charles Robert Lowry,)	
Andrew William Dunleavy; Brian Hellberg, Richard)	<u>CONSENT AGREEMENT</u>
Troy Chase; Andrew Scott Duff; Addison Lewis)	
Piper; Joseph Daniel Fleming; Paul Peter Karos;)	
David Wood MacLennan; James Louis Chosy;)	
Sandra Gay Sponem; and Ross Eugene Rogers)	
)	

Consent Agreement dated this 27th day of October, 2003, by the Montana Securities Department ("Department"), acting pursuant to the authority of Securities Act of Montana, § 30-10-101 et seq. Montana Code Annotated (the "Act") and § 2-4-603 Montana Code Annotated; U.S. Bancorp Piper Jaffray Inc., ("Piper") a registered broker-dealer, and Robert English ("English"), a registered salesman and branch manager of Piper's Butte, Montana office.

RECITALS

WHEREAS, the Department issued an Amended Notice of Proposed Agency Action ("Action") on January 24, 2002, alleging violations of the Act by Piper, English, Charles Robert Lowry, Andrew William Dunleavy, Brian Hellberg, Richard Troy Chase, Andrew Scott Duff, Addison Lewis Piper, Joseph Daniel Fleming, Paul Peter Karos, David Wood MacLennan, Sandra Gay Sponem, Ross Eugene Rogers, and James Louis Chosy ("Respondents") with respect to the supervision of Thomas J. O'Neill ("O'Neill"), a registered sales person formerly employed by Piper, and certain alleged fraudulent securities transactions conducted by O'Neill in customer accounts maintained with Piper; and

WHEREAS, the Department has engaged in extensive discovery of party and non-party witnesses, including the 38 customers who are the subject of the allegations contained within the Action; and

WHEREAS, the parties have agreed to vacate the hearing scheduled with respect to the Action in anticipation of this Consent Agreement and the Hearing Examiner has so vacated the hearing; and

WHEREAS, the Department, Piper and English have agreed that the best interests of the public would be served by dismissing the Action with respect to the Respondents and entering into the agreements and undertakings specified herein.

NOW THEREFORE, in consideration of the mutual undertakings herein contained the Department, Piper and English hereby agree to resolve their differences and settle this matter pursuant to the following terms and conditions:

I. SUMMARY OF ALLEGATIONS

A. The Action includes allegations that O'Neill engaged in actions that constitute fraudulent and unethical practices under the Act and its regulations, including unauthorized trading, excessive trading, unsuitable trading, unauthorized use of discretion, and charging unreasonable or inequitable fees for securities transaction services.

B. The Action includes allegations that Piper and English failed to reasonably supervise O'Neill with respect to his alleged unethical and fraudulent actions.

C. The Action includes allegations that the Respondents acted in violation of § 30-10-301, MCA and § 30-10-321, MCA.

II. STIPULATIONS AND CONSENTS

A. Without admitting or denying any of the allegations contained within the Action, Piper stipulates and consents to the following:

1. To create a restitution and investor protection fund in an amount equal to \$1,500,000 ("Fund"), by depositing this sum into an escrow account. The Fund shall be established, managed and distributed in accordance with the following terms and conditions:

(a) The amount of the Fund held in the escrow account shall be allocated pursuant to the calculations prepared by Ms. Lynne Egan, Senior Examiner/Analyst for the Department, attached hereto as **Exhibit A**. The Department shall provide a Notice to each Customer specifying the final allocated amount available to the Customer by certified, return receipt mail 15 days after the date of this Agreement.

(b) A Customer seeking to claim funds in the amount determined allocable and available for distribution pursuant to the calculations shall execute the form of document attached as **Exhibit B** acknowledging (i) receipt of funds and (ii) that such funds constitute a direct offset and mitigation against any claims for civil damages claimed by the Customer with respect to the accounts maintained and securities transactions conducted with Piper. No funds shall be distributed to any Customer without receipt of an executed form (**Exhibit B**). The receipt of a payment from the Fund by any Customer does not result in or require the release of any claims against Piper or its agents not previously released but shall constitute a direct offset and mitigation against any claims for civil damages claimed by the Customer.

(c) All claims upon the Fund, if any, must be made and all documents required for distribution executed by Customers within 30 days of receiving the Notice of their allocated amount.

(d) The escrow agent will deposit a Customer's allocated amount as directed by the Customer, including without limitation into an IRA, profit sharing plan or other Customer-designated retirement plan.

(e) The balance within the Fund after the payment of distributions to all Customers making claims upon the Fund shall be paid first to the Investor Protection Trust ("IPT"), a non-profit organization domiciled in the State of Wisconsin and administered by the Trustees of the IPT, in an amount not to exceed \$350,000 with any remaining balance in the Fund being paid to Piper.

2. To pay \$125,000 for reimbursement of grants to and expenses of the State Auditor, Department of Securities, incurred in connection with the investigation and litigation of the Action.

3. To pay an administrative fine of \$1,000,000 pursuant to M.C.A. § 30-10-305(3).

4. To implement procedures that modify the payment of production awards to registered representatives that will result in the following: (i) prohibiting the payment of any such awards to any person currently subject to an agreement for special supervision with any state securities commissioner, self-regulatory organization, or Piper; (ii) production from any period of special supervision is excluded from the calculation of any such award; and (iii) prohibiting any person who is the subject of any suspension,

censure or fine resulting from a final order of a state securities commissioner or SRO or consented to by the registered sales person from participating in any such award program for a period of two years from the date of such administrative sanction.

5. To require any person who supervises salespersons in Montana to be appropriately registered with the Department.

6. Amounts payable by Respondents pursuant to paragraphs II A 1-3 above shall be paid not later than 15 days following the date of this Consent Agreement.

B. Without admitting or denying any of the allegations contained within the Action, English stipulates and consents to the following:

1. Upon the execution of this Consent Agreement, he shall immediately relinquish his duties and responsibilities as branch manager of Piper's Butte, Montana branch office and from the date of this Consent Agreement he agrees not to act or participate in any supervisory or management position or function within Piper; provided he shall retain his registration as a registered representative and salesman of Piper.

2. He shall pay an administrative fine of \$10,000 pursuant to M.C.A. § 30-10-305(3), which fine English may pay over a period of two years.

C. Pursuant to the stipulations, agreements and consents of Piper and English, the Department, under the authority of the Act and § 2-4-603, Montana Code Annotated, hereby agrees that:

1. The Department has determined and shall execute contemporaneous with the Consent Agreement such documents and take such actions as are required to dismiss the Action with prejudice with respect to the Respondents. The Department shall take such actions, execute such documents and cooperate with Charles Robert Lowry, Andrew

William Dunleavy, Brian Hellberg, Richard Troy Chase, Andrew Scott Duff, Addison Lewis Piper, Joseph Daniel Fleming, Paul Peter Karos, David Wood MacLennan, Sandra Gay Sponem, Ross Eugene Rogers, and James Louis Chosy ("Dismissed Individuals") as necessary to provide such information and materials, including any court orders, as may be required by the Central Registration Depository ("CRD") and any security industry self-regulatory organization to expunge the Action and all allegations contained in it from the Form U-4 and any other records maintained by the CRD and any self-regulatory organizations with respect to the Dismissed Individuals.

2. The Department has recommended and will continue to recommend acceptance of the amounts available from the Fund to each Customer and counsel to such Customer, if any.

D. All parties to this Consent Agreement agree and acknowledge:

1. This Consent Agreement (i) shall not constitute a final judgment or order (including without limitation, for purposes of Section 15(b)(4)(H) of the Securities Exchange Act of 1934, as amended) and shall be deemed and shall constitute a consent judgment or decree pursuant to § 30-10-305(2) of the Act, (ii) shall not subject Piper (including for this purpose any of its affiliate companies), English or the Dismissed Individuals to any disqualification under the law of Montana or any other state, including disqualifications from relying upon state registration exemptions or state safe harbor provisions pursuant to the state securities laws, and any disqualifications based upon this Consent Agreement are hereby waived; (iii) shall not disqualify Piper (or its affiliates), English or the Dismissed Individuals from any business for which they are otherwise qualified, licensed or permitted to perform under the applicable law of any state, except

as stated in paragraph II, B, 1 prohibiting English from supervisory responsibilities; (iv) shall not be deemed or used as an admission or evidence of any alleged wrongdoing or liability of Piper (or its affiliates), English or the Dismissed Individuals and shall not be construed to have any collateral estoppel or other preclusive effect as to any issue of law or fact, in any civil, criminal, administrative, arbitration or other proceeding in any court, administrative agency, arbitration forum or other tribunal; (v) shall not confer any rights upon any persons or entities who are not parties hereto except as specifically provided with respect to the rights of those persons identified as Dismissed Individuals with respect to the dismissal with prejudice of the Action and the expungement of records contained within paragraph IIC(1), with respect to the rights of Customers to make a claim, if any, upon the Fund contained within paragraph IA(1)(a) and (b), and with respect to the rights, if any, of the IPT set forth in paragraph IA(1)(d); (vi) shall not constitute a record, report, statement or data compilation within the meaning of Rule 803(8) of the Federal Rules of Evidence; and (vii) shall not create any inferences or any admissions regarding the Action with respect to the remaining respondent O'Neill.

2. This Consent Agreement constitutes the entire agreement between the parties, there being no other promises or agreements, either express or implied. Under authority of the Act, the Department hereby agrees that it will not initiate any civil or administrative action against Respondents regarding the allegations contained in the Action. Respondents fully and forever release and discharge the Office of the State Auditor, the elected State Auditor and all State Auditor employees from any and all actions, claims, causes of action, demands, or expenses for damages or injuries that may arise from the allegations underlying this Consent

Agreement, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Action.

3. Upon signing this notarized Consent Agreement, and upon the Respondents delivering the payments of \$1,500,000 to create the Fund with the escrow agent as required by paragraph II(A)(1), \$125,000 to the State Auditor for the reimbursement amount specified in paragraph II(A)(2), and \$1,000,000 to the State Auditor as specified in paragraph II (A)(3), the State Auditor will file with the hearing examiner the Consent Agreement in regards to all matters now pending before him and seek a dismissal of this case, with prejudice with respect to all Respondents, which will represent the conclusion of all proceedings relating to the Action.

4. The parties shall cooperate with each other regarding publicity, including any press releases or press conferences. In particular, the Department will provide advance notice to Piper of press releases or press conferences that may result from this Consent Agreement. It is understood that the Department has discretion to determine content of its media releases and approval by Piper of such releases is not required.

DATED this 29th day of October, 2003.

MONTANA SECURITIES DEPARTMENT

By: Karen Powell
Karen Powell
Deputy Securities Commissioner

SUBSCRIBED AND SWORN to before me this 29 day of
OCTOBER, 2003.

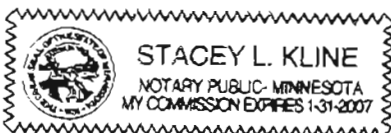
Paula Sautter
Notary Public for the State of Montana
Residing at Helena, Montana
My commission expires 4/1/06.

DATED this 27th day of October, 2003.

U.S. BANCORP PIPER JAFFRAY INC.

By: [Signature]
James L. Chosy
General Counsel

SUBSCRIBED AND SWORN to before me this 27th day of October, 2003.



[Signature]
Notary Public for the State of Minnesota
Residing at Hennepin County
My commission expires 1-31-07.

DATED this _____ day of _____, 2003.

ROBERT W. ENGLISH

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2003.

Notary Public for the State of Montana
Residing at _____, Montana
My commission expires _____.

DATED this _____ day of _____, 2003.

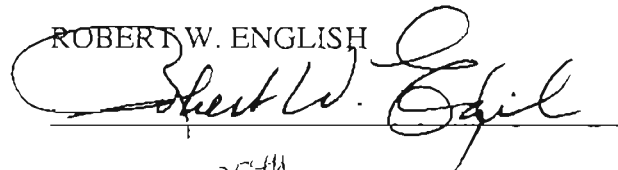
U.S. BANCORP PIPER JAFFRAY INC.

By: _____
James L. Chosy
General Counsel


SUBSCRIBED AND SWORN to before me this _____ day of _____, 2003.

Notary Public for the State of Minnesota
Residing at _____
My commission expires _____.

DATED this 29 day of OCTOBER, 2003.

ROBERT W. ENGLISH


SUBSCRIBED AND SWORN to before me this 29th day of October, 2003.

 Victoria A. Kestle
Notary Public for the State of Montana
Residing at Butte, Montana
My commission expires Jan. 29, 2003.

Montana State Auditor and Ex-Officio
Commissioner of Securities
Helena, Montana

IN THE MATTER OF:
U.S. Bancorp Piper Jaffray Inc., et al.

) CASE NO. I-02-05-01-075
)
) ACKNOWLEDGMENT
) OF FUNDS AND
) SETOFF

Pursuant to the Consent Agreement dated September ____, 2003, the Undersigned Customer has made a claim for funds from the Restitution Fund set up in accordance with, and pursuant to, the Consent Agreement. The undersigned hereby withdraws and accepts those funds allocated to him/her/us, as calculated under section II.A 1.(a) of the Consent Agreement.

By signing below, the undersigned customer hereby (1) expressly acknowledges receipt of the funds set forth next to his/her/their signature(s), and (2) expressly acknowledges and agrees that such funds constitute a direct setoff and mitigation against any claims for civil damages sought by the undersigned Customer against U.S. Bancorp Piper Jaffray Inc., and any of its present, past or future directors, officers, employees, and agents with respect to the accounts he/she/they maintained and securities transactions conducted by him/her/them with U.S. Bancorp Piper Jaffray Inc.

Date: _____
Amount received: \$ _____

Signature: _____
Print Name: _____
Address: _____

Subscribed and sworn to before me
this ____ day of _____, 2003.

ATTEST

(signature)
Printed Name: _____
Notary Public, State of _____
Residing at _____
My commission expires: _____

Attorney for _____

EXHIBIT A	
CUSTOMER NUMBER	AMOUNT ALLOCATED
Customer 1	\$ 6,269.29
Customer 2	\$ 36,708.08
Customer 3	\$ 21,666.51
Customer 4	\$ 39,613.93
Customer 5	\$ 0.00
Customer 6	\$ 0.00
Customer 7	\$ 8,256.61
Customer 8	\$ 72,926.46
Customer 9	(included with Customer 8)
Customer 10	\$ 5,190.52
Customer 11	\$ 96,790.61
Customer 12	(included with Customer 11)
Customer 13	\$ 97,167.35
Customer 14	\$ 47,057.96
Customer 15	\$139,949.07
Customer 16	\$ 8,773.77
Customer 17	\$ 0.00
Customer 18	\$ 53,068.44
Customer 19	\$ 36,905.34
Customer 20	\$ 5,785.65
Customer 21	\$ 83,296.98
Customer 22	\$ 0.00
Customer 23	\$ 6,051.49
Customer 24	\$ 1,199.60
Customer 25	\$ 23,616.68
Customer 26	\$ 29,589.36
Customer 27	\$ 59,134.56
Customer 28	\$234,689.22
Customer 29	\$ 32,715.18
Customer 30	\$ 5,314.32
Customer 31	(included with Customer 30)
Customer 32	\$ 30,802.34
Customer 33	\$ 56,653.52
Customer 34	\$ 32,925.92
Customer 35	\$ 7,041.01
Customer 36	\$ 79,424.91
Customer 37	\$ 42,634.28
Customer 38	\$ 12,577.02
TOTAL	\$1,413,795.98