DEPARTMENT OF CORPORATIONS
Sacramento, California

IN REPLY REFER TO:
FILE NO: OP 6600

COMMISSIONER'S OPINION 96/2C

THIS INTERPRETIVE OPINION IS ISSUED BY THE COMMISSIONER OF CORPORATIONS PURSUANT TO SECTION 25618 OF THE CORPORATE SECURITIES LAW OF 1968. IT IS APPLICABLE ONLY TO THE TRANSACTION IDENTIFIED IN THE REQUEST THEREFOR, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER TRANSACTION.

Russell M. Frandsen
Radcliff, Frandsen, Tricker & Dongell
Fortieth Floor
777 South Figueroa Street
Los Angeles, CA 90017-5800

Re: IPONET/W.J. Gallagher & Company, Inc.

Dear Mr. Frandsen:

This is in response to your letter dated July 31, 1996, and supplemented by your correspondences dated September 17, 18 and 24, 1996, and October 2, 4, 9 and 15, 1996.

The issue you raised is in regards to the interpretation of Corporations Code Section 25102(n)[1]. Your clients, W.J. Gallagher & Co., Inc., a California-licensed broker-dealer ("Broker-Dealer") and Netter Digital Entertainment[2], a television and motion picture program producer ("Issuer), desire to raise additional capital through a Section 25102(n) offering because, "...in their judgment, such capital could be raised at lower cost and more quickly than through conducting another SEC registered public offering." In particular, you asked whether the electronic "posting" or placement of a "general announcement" by your clients on the Internet would satisfy the requirement that a general announcement be "published by a written document only," as required in Section 25102(n)(5)(A).

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[1]All section references are to the Corporations Code unless otherwise specified.

[2]Netter Digital Entertainment, Inc. is currently a Section 12(g) reporting company under the Securities Exchange Act of 1934 and is listed on the NASDAQ Small Cap Market. It completed its initial public offering in November, 1995.

As a general rule, every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value made by communication on a proprietary or electronic delivery system such as the World Wide Web, otherwise known as the Internet, is an "offer" or are "offers to sell" securities (Section 25017(b)) "in this state" (Section 25008), subject to review and approval by the Commissioner of Corporations under the Corporate Securities Act of 1968 (e.g., Sections 25110, 25120, 25130), and are "advertisements" (Section 25002) required to be filed with the Commissioner, unless otherwise exempted.

However, Section 25102(n) exempts certain securities transactions from the review and approval process. Specifically, the exemption specifies several detailed criteria for the limited offering of securities to sophisticated investors, including, among other things, the requirement that: (1) the sales of securities are made only to qualified purchasers the issuer reasonably believes to be qualified (Section 25102(n)(2)); (2) each person receives a written offering disclosure statement before the securities are sold to the purchaser (Section 25102(n)(4)); (3) a general announcement with specified information be published by "written document only" (Section 25102(n)(5)); and (4) no telephone solicitations are allowed prior to the issuer determining that the potential investor is qualified (Section 25102(n)(6)).

A. To Publish

Section 25014 states that "publish" means "...publicly to issue or circulate by newspaper, mail, radio or telephone, or otherwise to disseminate to the public."

In our opinion, the definition of this term is broad enough to include the act of making information accessible to the public by electronic means such as the Internet. You represent that Broker-Dealer will create a website on the Internet called IPONET. This website will enable companies, such as Issuer, to make limited offerings electronically, pursuant to Section 25102(n). Therefore, since Issuer, through Broker-Dealer, will be disseminating the offer of the securities over the Internet, it is our view that Broker-Dealer and Issuer will be "publishing" the general announcement.

B. Written Document Only

Generally, the term "written document" or "writing" involves the placement of letters or characters on a medium that serves as visible signs of ideas, words, or symbols (Merriam Webster's Dictionary, Tenth Edition). In other words, "writing" is the placement of language on a medium in <u>readable</u> form. Thus,

information which is disseminated in readable form by electronic means would satisfy the requirement for a written document. However, dissemination of audio and/or video images not in textual format, or information by electronic means other than in readable form would not constitute a written document for purposes of Section 25102(n).

You represent that the IPONET Website will have a "button" labeled "Public Offering," which when "clicked" by the viewer will show the corporation's corporate logo, name of the stock offered, and instructions to "click" the screen for more information. When so "clicked" by the viewer, the next screen will show the general announcement of proposed offering, as specified by Section 25102(n). You state that the general announcement will contain other information which may be required under other states' laws or regulations, as well. You represent that such additional information will be demarcated to indicate that such information is intended for residents of that particular state only.

Furthermore, you represent that the general announcement, and the accompanying information transmitted over the Internet will only be in a "readable" (i.e. textual) form. You also state that potential investors will have the opportunity to request printed copies of the information viewed by them on the computer screen, either through the U.S. Mail or other document delivery service, or will be able to print out the questionnaires and other information on their own computer printers. Therefore, because the information on the website will only be textual, will be in a "readable" form, and will be accessible to the public, it is our view that the electronic delivery of this information to the viewer's computer screen in readable form only can be considered "published by written document only" for purposes of the Section 25102(n) exemption.

1. Prospectus Delivery

Similarly, you ask whether a prospectus (or written offering disclosure) delivered to an investor who has consented to receive the information electronically will have satisfied the "delivery" requirement of Section 25102(n)(4). Section 25102(n)(4) requires that each natural person purchaser receives a written offering disclosure statement at least five business days before securities are sold to, or a commitment to purchase is accepted.

You represent that the purchaser will indicate in the Qualified Purchaser Questionnaire that he or she desires to receive the prospectus electronically.

Since the electronic delivery of the prospectus will be made only at the behest of the potential purchaser, and he or she will be able to either read the prospectus on the computer screen or may print out the prospectus on his or her printer, it is our opinion that electronic delivery of the prospectus will satisfy the delivery requirement of Section 25102(n). This view is consistent with the position of the Securities and Exchange Commission in Release No. 33-7233.

C. General Announcement To Contain Designated Information Only

1. Under California Law

Section 25102(n)(5) specifically limits the type of information that is allowed in a general announcement. For example, among other things, the general announcement must include the issuer's name, the full title of the security issued, the suitability standards for prospective purchasers, and a legend. Other designated information may also be included.

You represent that the general announcement will contain information allowed pursuant to Section 25102(n)(5). Moreover, the general announcement will also contain other "buttons" through which the potential purchaser may access other "documents" or information, such as the qualified purchaser questionnaire, financial advisor questionnaire, offering disclosure statement, application to open an account with Broker-Dealer, and subscription agreement.

Arguably, and in our view, making documents such as questionnaires and disclosures electronically accessible to potential purchasers is within the scope of Section 25102(n), subject to the requirements of that section, since the required legend states that potential purchasers may send for or call the issuer directly for additional information.

2. Laws of Other States

You also represent that the offering will be made in other states, such as Texas. In this regard, you state that the general announcement will contain specific legends emphasizing that certain information is directed to Texas residents only, as required by that state law, while other information is directed only to California residents, as required under Section 25102(n). The specific legends required by various states, if demarcated clearly, will not violate the limitation of information pursuant to Section 25102(n)(C), without more.

D. Sales to Qualified Purchasers Only/No Telephone Solicitation To Unqualified Potential Investors

Section 25102(n)(2) states that sales be made only to qualified purchasers. Moreover, the statute prohibits telephone solicitations to unqualified potential investors (Section 25102(n)(6)). The parameters for what constitutes a "qualified purchaser" are specified in Section 25102(n)(2)(A) through (F).

In this regard, you represent that Broker-Dealer will review completed investor questionnaires that are either electronically transmitted or mailed back to them. A determination, you represent, could be made in a matter of minutes or longer if the completed investor questionnaires are transmitted electronically. You also represent that either Broker-Dealer will make the determination as to whether or not the prospective investor is qualified, or Issuer itself will make the determination. You further state that only upon a determination that the potential purchaser is a qualified purchaser, will solicitations over the telephone, including electronic communication via the Internet or "e-mail," begin.

The statute provides that "[s]ales of securities are made only to qualified purchasers...the issuer reasonably believes, after reasonable inquiry, to be qualified purchasers." Therefore, the entity issuing the securities is ultimately responsible for making the determination as to whether or not the potential investor meets the suitability standards. Even if an issuer contracts with a California-licensed broker-dealer to make the "qualified purchaser" determinations, the ultimate responsibility always lies with the issuer. Therefore, in this case, Issuer may contract with Broker-Dealer to perform the due diligence necessary to determine whether a potential investor is a qualified purchaser. However, Issuer will remain responsible for such determination under Section 25102(n).

E. Advertisements

Lastly, the general rule is that an "advertisement" is "...any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, published in connection with the offer or sale of a security." (Section 25002) It is our opinion that, since the Internet communication would be made in a electronic communications medium, the general announcement transmitted over the Internet would constitute an "advertisement" within the meaning of Section 25002.

You represent that Broker-Dealer and Issuer also have separate Internet Websites. They intend to place electronic "notices" on these websites directing interested persons to the IPONET Website for the general announcement relating to the securities offering. Moreover, you represent that the "notice" will be substantially in the following form: "Netter Digital Entertainment, Inc., the producer of Babylon V television series, is offering shares of Series A convertible preferred stock. For more information, see [website address]." Since the proposed "notices" will only contain the statement directing those interested persons to the general announcement website address, it would not constitute a general announcement because the information required under Section 25102(n) is not included. However, this "notice", although not a general announcement, would be an "advertisement" under Section 25002.

You argue that this "notice" would be exempt from filing requirements under Section 25300(a) by virtue of Section 25300(b)(2). Section 25300(b)(2) exempts advertisements published in relation to specified exempt transactions. Section 25300(b)(2) would only be available if the transaction is, in fact, exempt pursuant to Section 25102(n).

Because there are unique communication features of the Internet, there must be a close correlation between information allowable pursuant to the Section 25102(n) general announcement, and information found on Issuer's (and Broker-Dealer's) website or a homepage, along with the "notice." Indeed, a homepage or website may act as a "conduit" between it and the general announcement. And because of this conduit feature, an interested person may access information about Issuer or the securities offering on the Issuer's or Broker-Dealer's website or homepage prior to accessing the general announcement. Thus, it is our view that the information on Issuer's or Broker-Dealer's website or homepage should not, without limitation, be inconsistent with that which is allowable in connection with a further request by an interested person for "more complete information" pursuant to the general announcement and as provided for by Section 25102(n)(5)(A)(vi).

To the extent that information on Issuer's or Broker-Dealer's homepage or website goes beyond or is inconsistent with the "more complete information" allowable pursuant to the Section 25102(n) general announcement, this information would be treated as an "advertisement" under Section 25300(a), and would be required to be filed with the Department of Corporations for review.

Therefore, so long as the Issuer's and Broker-Dealer's websites do not contain information that is inconsistent with that which is allowable pursuant to the general announcement and Section

25102(n)(5)(A)(vi), including the "notice" directing viewers to the general announcement, such advertisements would be exempt from filing requirements under Section 25300(b)(2).

Further, if Issuer were to decide to broaden the scope of the offering by offering the securities to the public at large, the Issuer would be required to qualify the offering, and abide by requirements in the Corporate Securities Law of 1968, such as those related to "advertisements" as delineated in Part 4 of Chapter 1 (commencing with Section 25300) and Article 12 (commencing with Section 260.300) of Subchapter 2 of Chapter 3 of Title 10 of the California Code of Regulations.

Based on the representations made on behalf of Broker-Dealer and Issuer in regards to this request, subject to the limitations set forth in this opinion, and in view of Broker-Dealer and Issuer's activities in connection with the proposed limited offering to qualified purchasers as represented in this request, we conclude that the electronic posting of a "general announcement" on the Internet satisfies the requirement that a general announcement be "published by a written document only," as required in Section 25102(n)(5)(A).

Date: October 17, 1996
Sacramento, California

By Order Of
KEITH PAUL BISHOP
Commissioner of Corporations

WILLIAM KENEFICK
Assistant Commissioner
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July 31, 1996

Mr. Wallace Wong, Esq.
CALIFORNIA DEPARTMENT OF CORPORATIONS
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Re: Corporate Securities Law Subsections 25102(f) and (n)

Dear Mr. Wong:

I am enclosing a copy of the No Action Request letter ("Request") that I sent to the SEC on behalf of IPONET, together with a copy of the No Action response ("No Action Letter") which I received from the SEC on Friday, July 26, 1996.

IPONET requests the Commissioner's concurrence on the following issues:

1. Section 25102(f). If IPONET follows the procedures set forth in the Request and the SEC No Action Letter, including the posting of a private placement memorandum on a password protected page of the website accessible only by persons who meet the requirements for purchasers under 25102(f)(2), then an offer and sale of a security in California which otherwise meets the requirement of Section 25102(f) will not be deemed to have been accomplished by the publication of any advertisement.

2. Section 25102(n). IPONET intends to assist issuers with transactions under Section 25102(n). IPONET intends to publish general announcements which conform to Section 25102(n)(5) by posting such general announcements on the IPONET web site. The web site will include an electronic "coupon" or dialogue box permitting a prospective investor to send a request for additional information directly from the web site to IPONET or the issuer. Specifically, the general

announcement will include the following statement: "For more complete information about (Name of Issuer) and (Full Title of Security), send for additional information from (Name and Address) by using the "Send For Information" dialogue box, by mailing a written request, or by calling (Telephone Number)." IPONET also intends to send e-mail announcements of 25102(n) offerings to members of IPONET, inviting them to review the genereal announcement on the IPONET Web Site. In addition, if the prospective investor so requests, then the additional information may be delivered by electronic means. IPONET requests the Commissioner's concurrence that the publishing of a written document under Section 25102(n)(5) includes publication by posting the general announcement on the IPONET website. Furthermore, IPONET requests the Commissioner's concurrence that the inclusion of an electronic "coupon" or dialogue box allowing prospective purchasers to request additional information satisfies the requirements of Section 25102(n)(5)(vi).

In support of this request, please review the reasons set forth in the Request and in the No Action Letter and in the SEC Release No. 33-7233, October 6, 1995, which generally indicates that electronic communication via e-mail and equivalents is equivalent to written communications on paper.

If you would like me to prepare a more complete letter without incorporating the No Action Letter and the Request by reference, please make the let me know.

For your information, the IPONET Web Site may be accessed at http//:www.zanax.com/iponet~. The Site is still under construction so it is not yet complete. As of this date, no offerings have been made using IPONET.

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF

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Securities Act of 1933, as amended, Sections: 2(10), Rule 230.134
4(2)
Regulation D, Section 502(c)

July 23, 1996

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

Re: IPONET

Ladies and Gentlemen:

I am submitting this request for a No Action Letter pursuant to Release No. 33-6269. Accordingly, please find enclosed seven copies of this letter, together with the original.

Summary of Request

The specific requests for no action assurance are set forth in detail later in this letter. As an introduction, IPONET seeks assurance on the following issues:

1. Indications of Interest may be Accepted Electronically. In connection with a public offering, W.J. Gallagher & Company, Inc., may accept indications of interest via electronic coupon or card as well as a paper coupon or card, if the requirements of Rule 134(d) are otherwise met.

2. The Posting of a Notice of a Private Offering in a Password-protected Page of IPONET Accessible Only to IPONET Members Who Have Previously Qualified as Accredited Investors Does Not Involve Any Form of General Solicitation or General Advertising Within the Meaning of Regulation D Section 502(c). W.J. Gallagher & Company, Inc., through the IPONET

web site, will solicit individuals who meet the "accredited investor" or sophisticated investor standards of Regulation D to register as "Accredited Investors" as a means of building a customer base and data base of accredited and sophisticated investors for W.J. Gallagher & Company, Inc. After an individual has been determined to meet the requirements of an Accredited Investor, the Accredited Investor may review offers for private offerings of securities from companies that have posted private offerings with IPONET in accordance with the rules otherwise applying under Regulation D. The solicitation for Accredited Investors will be independent of and will not be linked to or made specifically with reference to any pending private offering. Accredited Investors may not invest in private offerings that were posted on IPONET before the Accredited Investor registered. Under these circumstances, an offer of securities otherwise satisfying the requirements of Regulation D to accredited or sophisticated investors who have been independently and previously solicited as customers of W.J. Gallagher & Company, Inc. will not constitute a general solicitation or general advertising within the meaning of Regulation D Section 502(c).

The Facts

1. IPONET is a sole proprietorship, wholly owned by Leo J. Feldman ("Feldman"), an individual. W.J. Gallagher & company has established and will maintain a system to supervise the activities of Feldman, including those pursued through IPONET, that is reasonably designed to achieve compliance with all applicable securities laws and regulations, and with the rules of the NASD and any other applicable self-regulatory organization.

2. Feldman is a registered principal of W.J. Gallagher & Company, Inc. W.J. Gallagher & Company, Inc., conducts a general securities business, including participation in public offerings as a "selected dealer".

3. IPONET has established a home page and other linked pages (collectively "Site") on the World Wide Web located at http://www.zanax.com/iponet. IPONET intends to post on its Site "tombstone" advertisements meeting the requirements of Rule 134, together with the red herring prospectus meeting the requirements of Rule 430. Such "tombstone" advertisements and the red herring prospectuses will set forth the names of the underwriters,. In cases where W. J. Gallagher & Co., Inc. will not act as an underwriter, the name of W.J. Gallagher & Company, Inc., will not appear on the "tombstone" or on the red herring prospectus. The distribution of the "tombstone" advertisement and the red herring prospectus by the issuer and its underwriters through the Site will be in accordance with Release No. 33-7233, dated October 6, 1995. The Site will also set forth a separate statement substantially as follows: "The securities offered by [Name of Issuer] pursuant to the Preliminary Prospectus dated [insert date] are available through W.J. Gallagher & Company, Inc." In addition, in the case where W.J. Gallagher & Company, Inc., will not act as an underwriter, the Site will contain a statement substantially as follows: "W.J. Gallagher & Company, Inc., is not an underwriter of the securities of [Name of Issuer], but is

authorized to accept customer orders for the purchase of the securities." In such cases, W.J. Gallagher & Company, Inc., will not purchase any of the securities from the Issuer for resale, will not participate in any such undertaking directly or indirectly, will not participate in the management of the distribution of the issue or any part of the issue, and will not perform any function normally performed by an underwriter or underwriting syndicate. IPONET is not asking for the Division's view on whether IPONET or W.J. Gallagher & Co., Inc., is acting as an underwriter, since such determinations are made on a case by case basis.

4. The IPONET Site will also link to any "tombstone" advertisements or red herring prospectus the following statements from Rule 134 (b)(1) and (d), respectively:

> "A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This (communication) shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."
>
> "No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date. An indication of interest in response to this advertisement will involve no obligation or commitment of any kind."

5. The Site will also contain an electronic "coupon" or "card" linked to each red herring prospectus. A visitor to the Site will be invited to complete and send this electronic "coupon" or "card", via e-mail or communications link in the Site itself or by printing the coupon or card and sending it by regular carrier, indicating an interest in purchasing the security.

6. In cases where W.J. Gallagher & Company, Inc., will not act as an underwriter, but the securities will be sold through W.J. Gallagher & Company, Inc., as one of the "selected dealers", W.J. Gallagher & Company, Inc., will receive a commission which will not exceed the usual and customary distributors' or sellers' commission.

7. The Site contains a section entitled "Accredited Investor". Persons who have previously registered as a member of IPONET are invited to request registration with IPONET as an "Accredited Investor". These Accredited Investors will be added to W.J. Gallagher & Company, Inc.'s customer and data base. In order to register, the member must complete an on-line questionnaire substantially in the form of Exhibit A, which is designed to allow W.J. Gallagher & Company, Inc., and any potential issuer to determine, or to have a basis for a

reasonable belief, that a member is an "accredited investor" within the meaning of Regulation D, Rule 501(a) or a sophisticated investor under Rule 506. The questionnaire may be completed on-line in a secured manner or printed out and returned in hard copy. W.J. Gallagher & Company, Inc., will verify the information in the questionnaire to determine that the member is an Accredited Investor. Once a Member is qualified and registered as an "Accredited Investor", then the Accredited Investor will be given a password which will allow the Accredited Investor to access a password-protected page where private offerings will be posted and the Accredited Investor may access further information. However, the IPONET site will only allow an Accredited Investor access to those private offerings which are posted subsequent in time to the Accredited Investors qualification with IPONET. If the Accredited Investor has consented, then IPONET may contact the Accredited Investor in the future about new private offerings that are posted on IPONET.

8. The name of the Accredited Investor will be kept confidential by IPONET and W.J. Gallagher & Company, Inc., and will not be released to the issuers making the private offerings unless the Accredited Investor specifically consents to such release to a particular issuer. This consent may be given on-line.

9. Private issuers may post their private offerings in the password-protected section of IPONET. No mention or description of the issuer of any nature will be available on IPONET to any person, other than those who have previously qualified as Accredited Investors, who must use their password to enter the password-protected part of IPONET.

10. In cases where W.J. Gallagher & Company, Inc., is not acting as a broker-dealer, IPONET will charge a "listing fee" of a set amount. The listing fee will cover such items as design and graphics work, technical consulting regarding the listing, and historical popularity of the Site (analogous to the circulation history of newspapers). The listing fee will be independent of the size of the private offering, any investment made by Accredited Investors, and the number of hits to the Site after listing. (In such cases, W.J. Gallagher & Company, Inc., will be completely independent of the issuer and W.J. Gallagher & Company, Inc., will receive no compensation of any nature.) In cases where W.J. Gallagher & Company, Inc., is acting as a broker-dealer, IPONET will still receive only the listing fee and nothing more. Neither W.J. Gallagher & Company, Inc., nor IPONET will have an affiliation with or any interest of any kind in the issuer prior to or at the time of the offering of the private offering.

11. An Accredited Investor may invest only in private offerings which are posted on IPONET subsequent in time to the registration of the Accredited Investor with IPONET, and then only after a sufficient time has elapsed between the IPONET member's registration as an Accredited Investor and the inception of a private offering so that the registration as an Accredited Investor is not deemed to be a solicitation for a particular private offering.

12. Each issuer desiring to list a private offering with IPONET will covenant to

issues securities in a private offering in strict accordance with Regulation D. The obligation to assure compliance with Regulation D will rest upon the issuer.

Legal Analysis

1. W.J. Gallagher & Company, Inc. May Accept Indications of Interest Via E-Mail.

Rule 134 (d) provides as follows:

(d) A communication sent or delivered to any person pursuant to this rule which is accompanied or preceded by a prospectus which meets the requirements of Section 10 of the Act at the date of such communication, may solicit from the recipient of the communication an offer to buy the security or request the recipient to indicate, upon an enclosed or attached coupon or card, or in some other manner (emphasis added), whether he might be interested in the security, if the communication contains substantially the following statement:

> "No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date. An indication of interest in response to this advertisement will involve no obligation or commitment of any kind."

As described above in Facts, paragraphs 3 and 4, the Site will contain the notices required by Rule 134(b)(1) and (d) linked to any tombstone advertisement and red herring prospectus.

Rule 134(d) specifically contemplates that indications of interest may be accepted by a "coupon or card, or in some other manner". IPONET's electronic "coupon" or "card" may be sent directly from the Site or independently via e-mail, or printed in hard copy and sent via regular carrier. An electronic or e-mail indication of interest as described should qualify as a card or coupon in harmony with Release No. 33-7233, October 6, 1995, and certainly qualifies under the phrase "some other manner" and is entirely consistent with the 1933 Act and the Rules thereunder. See the excerpt from Release No. 33-7233 set forth below.

2. The Posting of a Notice of a Private Offering in a Password-protected Page of IPONET Accessible Only to IPONET Members Who Have Previously Qualified as Accredited Investors Does Not Involve Any Form of General Solicitation or General Advertising Within the Meaning of Regulation D Section 502(c).

In H.B. Shaine & Co., Inc., No Action Letter dated May 1, 1987, the staff indicated that a distribution by Shaine of questionnaires to prospective accredited and sophisticated investors to determine their suitability to participate in private offerings would not be deemed a "general solicitation or general advertisement". This view was premised upon several factors, including the use of a generic questionnaire and upon the elapse of a sufficient period of time between the completion of the questionnaire and the contemplation or inception of any particular offering.

As described above in Facts, paragraphs 7-11, W.J. Gallagher & Company, Inc., will follow substantially the same procedure as Shaine. The primary distinction appears to be simply that the questionnaire will be distributed electronically through the IPONET Site and the questionnaire may be returned either electronically through a link in the Site, through e-mail, or by hard copy, and one assumes that Shaine sent and received the questionnaires through traditional means. Similarly, the documents relating to a private offering to the Accredited Investors would be distributed electronically through the IPONET Site password protected page available only to Accredited Investors. The No Action Letter did not address the means of communication.

In Release No. 33-7233, the Commission stated:

> The Commission appreciates the promise of electronic distribution of information in enhancing investors' ability to access, research, and analyze information, and in facilitating the provision of information by issuers and others. The Commission believes that, given the numerous benefits of electronic distribution of information and the fact that in many respects it may be more useful to investors than paper, its use should not be disfavored. * * * Given the numerous benefits of electronic media, the Commission encourages further technological research, development and application. The Commission believes that the use of electronic media should be at least an equal alternative to the use of paper-based media. Accordingly, issuer or third party information that can be delivered in paper under the federal securities laws may be delivered in electronic format. (Emphasis added.)

Accordingly, since W.J. Gallagher & Company, Inc., will be soliciting questionnaires for Accredited Investors and will be distributing information on private offerings electronically that it could otherwise properly do by paper, the posting of private offerings in a password protected page of IPONET would not involve general solicitation or general advertisement within the meaning of Rule 502(c) under the circumstances discussed above.

Conclusion

We request that you concur with the conclusions set forth above. If you have questions or comments, please contact me directly.

DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

TELECOPIER TRANSMITTAL COVER SHEET

Date

Please deliver the following pages TO:

Name: Russell M. Frandsen

Firm: _____

Telecopier Number: 213 489-9263

Telephone Number: _____

FROM:

Name: Joe Babits

Corporation Finance/Office of ~~Disclosure Policy~~ Chief Counsel

Telecopy Number: (202) 942-9525

Telephone Number: (202) 942-~~2910~~ 2900

Total Number of Pages (including cover page) 2

Transmitted by: _____

Time Sent: _____

July 26, 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: IPONET
Incoming letter dated July 23, 1996

Based on the facts presented, the Division's views are as follow:

(1) The reference in Rule 134(d) to "an enclosed or attached coupon or card, or in some other manner" would be equally applicable to the acceptance of indications of interest via electronic coupon or card as well as paper coupon or card by W.J. Gallagher & Company, Inc. ("Gallagher"). In this regard, we note your representation that the other requirements of Rule 134(d) will be satisfied in connection with the acceptance of such indications of interest.

(2) The qualification of accredited or sophisticated investors in the manner described and the posting of a notice of a private offering in a password-protected page of IPONET accessible only to IPONET members who have qualified as accredited investors would not involve any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) of Securities Act Regulation D. In reaching this conclusion, we note that (a) both the invitation to complete the questionnaire used to determine whether an investor is accredited or sophisticated and the questionnaire itself will be generic in nature and will not reference any specific transactions posted or to be posted on the password-protected page of IPONET; (b) the password-protected page of IPONET will be available to a particular investor only after Gallagher has made the determination that the particular potential investor is accredited or sophisticated; and (c) a potential investor could purchase securities only in transactions that are posted on the password-protected page of IPONET after that investor's qualification with IPONET. In this regard, we take no position as to whether the information obtained by Gallagher is sufficient to form a reasonable basis for believing an investor to be accredited or sophisticated.

Because these positions are based on the representations made to the Division in your letter, it should be noted that any different facts might require a different result.

Sincerely,

Joseph Babits
Special Counsel

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September 17, 1996

Ms. Gayle Oshima
Department of Corporations
980 9th Street
Suite 500
Sacramento, CA 95814

Re: IPONET / W.J. Gallagher & Company, Inc.

Dear Ms. Oshima:

I appreciated you taking the time to discuss the Section 25102(n) and the Internet offering issues with me today. I will write a more detailed letter concerning the proposed offering in the near future.

For you information, I am attaching a copy of the Texas Rule which exempts public offerings to accredited investors.

Very truly yours,

Russell M. Frandsen

RUSSELL M. FRANDSEN, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF

Texas Exempt Sales to Accredited Investors.

Sec. 139.16. Sales to individual accredited investors.

(a) In general. The State Securities Board, pursuant to the Securities Act, §5.T. exempts from the securities registration requirements of the Securities Act, §7, the offer and sale by the issuer or a registered dealer without advertising of any security to an individual accredited investor, or to any purchaser who the issuer has reasonable grounds to believe and after making reasonable inquiry shall believe to be an individual accredited investor, provided that such security is not part of the same distribution or offering as securities of the same issuer which have been registered or are proposed to be registered by pending application under the Securities Act §7."Advertising," as used in this subsection, does not include the use of limited use advertisements under subsection (e) of this section or the use of the type of printed material as permitted by §109.13(b) of this title (relating to Limited Offering Exemptions) in connection with an offering under the Act,§5.I.

(b) Who may purchase; who constitutes the issuer for purposes of selling securities.

(1) Individual accredited investors. For purposes of this section, the term "individual accredited investor" shall mean any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1 million or any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year. The term "individual accredited investor" shall also include any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in this paragraph and the individual retirement account of any such individual accredited investor.

(2) Issuer. For the purposes of this section, the term "issuer" includes any director, officer, or employee of the issuer provided all the following conditions are satisfied:

(A) the director, officer, or employee was not hired for the purpose of offering or selling such securities;

(B) the director's, officer's, or employee's activity involving the offer and sale of such securities is strictly incidental to his or her bona fide primary non-securities related work duties; and

(C) the director's, officer's, or employee's compensation is based solely on the performance of other such duties, i.e., the director, officer, or employee does not receive any compensation for offering for sale, selling, otherwise aiding in the sale of securities.

(c) Disqualifications. (1) No exemption under this section shall be available for the securities of any issuer if the issuer or registered dealer:

(A) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator;

(B) within the last five years, has been convicted of any felony in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order, entered within the last five years, finding fraud or deceit in connection with the purchase and sale of any security; or

(D) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in

connection with the purchase and sale of any security.

(2) For purposes of subsections (c) and (d) only, the term "issuer"includes:

(A) any of the issuer's predecessors or any affiliated issuer;

(B) any of the issuer's directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities(beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities);

(C) any of the issuer's promoters presently connected with the issuer in any capacity, including:

(i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives inconsideration of services or property, or both services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or property either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; or

(D) any underwriter of the issuer.

(3) For purposes of subsections (c) and (d) only, the term "registered dealer" includes any of the registered dealer's partners, directors, executive directors or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the visioned/or the power to dispose or direct the disposition of such securities).

(d) Exceptions from Disqualification. The prohibitions of subsection (c)of this section shall not apply if:

(1) the party subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; or

(2) before the first offer under this section, the Securities Commissioner, or the court or regulatory authority that entered the order, judgement, or decree, waives the disqualification upon a showing of good cause.

(e) Limited use advertisements. Any limited use advertisement used in connection with an offering under this section must be filed with the Securities Commissioner ten days prior to use in this state. A limited use advertisement may be disseminated by any means, direct or indirect. A limited use advertisement shall contain only the statements required or permitted to be included therein by this subsection.

(1) A limited use advertisement shall contain the following items of information:

(A) a brief description of the securities to be offered (e.g. description of class, size of offering, price, percentage of commission);

(B) the name, address, and telephone number of the person to contact for additional information concerning the offering;

(C) the address where offering material may be obtained; and

(D) the following statement: "The securities have not been registered with or approved by the Texas Securities Commissioner and are being offered and sold pursuant to the exemption provided by §139.16 of the Rules and Regulations of the State Securities Board. This advertisement was filed with the Texas Securities Commissioner on or about (fill in date). The securities are being offered to, and may be purchased by, only those natural persons whose individual net worth, or joint net worth with that person's spouse, at the time of purchase of the

securities, exceeds $1 million or natural persons who have an individual income in excess of $200,000 in each of the two most recent years, or joint income with that persons's spouse in excess of $300,000 in each of those years, and who have a reasonable expectation of reaching that same income level in the current year."

(2) A limited use advertisement may include any one or more of the following items of information:

(A) the name and address of the issuer of the securities;

(B) a brief description of the business of the issuer; and

(C) the name and address of the registered dealer(s) acting on the issuer's behalf in connection with the offering.

(f) Any issuer relying on this exemption shall, upon written request, furnish to the Securities Commissioner the information furnished by the issuer or registered dealer to offerees. Any issuer relying on this exemption must maintain, for a period of at least three years, evidence of the basis for its belief that all purchasers were accredited investors at the time of purchase.

(g) Transactions exempt under this section may be combined with offers and sales exempt under The Securities Act, §5.H, and §109.3(c) of this title(relating to Sales to Financial Institutions and Certain Institutional investors under The Securities Act, §5.H). In this event, the statement required by subsection (e)(1)(D) may be modified to indicate that the securities are also being offered to eligible purchasers under §5.H and§109.3(c) of this title (relating to Sales to Financial Institutions and Certain Institutional Investors under The Securities Act, §5.H).

(h) Because this exemption permits limited use advertisements, use of this exemption under certain circumstances could result in other exemptions not being available for other sales due to prohibitions in such exemptions against public solicitation and advertisements. Therefore, issuers or registered dealers who use this exemption should take all necessary steps to document that any sales to person who are not individual accredited investors, as defined, were not made in response to a limited use advertisement. Users of this section should consult with experienced securities counsel, especially if they anticipate selling, within six months of the last sale made under this section, to any persons who are not individual accredited investors.

(I) The use of a limited use advertisement in compliance with this section and in connection with sales under this section will not render exemptions that prohibit public solicitations or advertisements unavailable to sales that are made more than six months after the use of the limited use advertisement.

(j) Should the offer and sale of securities fail, for any reason, to comply with all the terms and conditions for use of this section, the issuer may claim the availability of any other applicable exemption. A limited use advertisement that results in an offer to a person who is not an individual accredited investor within the meaning of this section does not alone result in loss of the exemption.

[Added eff. 4-21-95; Amended eff. 12-27-95.]

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July 31, 1996

Mr. Wallace Wong, Esq.
CALIFORNIA DEPARTMENT OF CORPORATIONS
3700 Wilshire Blvd., Suite 600
Los Angeles, California 90010

Re: Corporate Securities Law Subsections 25102(f) and (n)

Dear Mr. Wong:

I am enclosing a copy of the No Action Request letter ("Request") that I sent to the SEC on behalf of IPONET, together with a copy of the No Action response ("No Action Letter") which I received from the SEC on Friday, July 26, 1996.

IPONET requests the Commissioner's concurrence on the following issues:

1. Section 25102(f). If IPONET follows the procedures set forth in the Request and the SEC No Action Letter, including the posting of a private placement memorandum on a password protected page of the website accessible only by persons who meet the requirements for purchasers under 25102(f)(2), then an offer and sale of a security in California which otherwise meets the requirement of Section 25102(f) will not be deemed to have been accomplished by the publication of any advertisement.

2. Section 25102(n). IPONET intends to assist issuers with transactions under Section 25102(n). IPONET intends to publish general announcements which conform to Section 25102(n)(5) by posting such general announcements on the IPONET web site. The web site will include an electronic "coupon" or dialogue box permitting a prospective investor to send a request for additional information directly from the web site to IPONET or the issuer. Specifically, the general

announcement will include the following statement: "For more complete information about (Name of Issuer) and (Full Title of Security), send for additional information from (Name and Address) by using the "Send For Information" dialogue box, by mailing a written request, or by calling (Telephone Number)." IPONET also intends to send e-mail announcements of 25102(n) offerings to members of IPONET, inviting them to review the genereal announcement on the IPONET Web Site. In addition, if the prospective investor so requests, then the additional information may be delivered by electronic means. IPONET requests the Commissioner's concurrence that the publishing of a written document under Section 25102(n)(5) includes publication by posting the general announcement on the IPONET website. Furthermore, IPONET requests the Commissioner's concurrence that the inclusion of an electronic "coupon" or dialogue box allowing prospective purchasers to request additional information satisfies the requirements of Section 25102(n)(5)(vi).

In support of this request, please review the reasons set forth in the Request and in the No Action Letter and in the SEC Release No. 33-7233, October 6, 1995, which generally indicates that electronic communication via e-mail and equivalents is equivalent to written communications on paper.

If you would like me to prepare a more complete letter without incorporating the No Action Letter and the Request by reference, please make the let me know.

For your information, the IPONET Web Site may be accessed at http//:www.zanax.com/iponet~. The Site is still under construction so it is not yet complete. As of this date, no offerings have been made using IPONET.

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF

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Securities Act of 1933, as amended, Sections: 2(10), Rule 230.134
4(2)
Regulation D, Section 502(c)

July 23, 1996

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
Washington, D.C. 20549

Re: IPONET

Ladies and Gentlemen:

I am submitting this request for a No Action Letter pursuant to Release No. 33-6269. Accordingly, please find enclosed seven copies of this letter, together with the original.

Summary of Request

The specific requests for no action assurance are set forth in detail later in this letter. As an introduction, IPONET seeks assurance on the following issues:

1. Indications of Interest may be Accepted Electronically. In connection with a public offering, W.J. Gallagher & Company, Inc., may accept indications of interest via electronic coupon or card as well as a paper coupon or card, if the requirements of Rule 134(d) are otherwise met.

2. The Posting of a Notice of a Private Offering in a Password-protected Page of IPONET Accessible Only to IPONET Members Who Have Previously Qualified as Accredited Investors Does Not Involve Any Form of General Solicitation or General Advertising Within the Meaning of Regulation D Section 502(c). W.J. Gallagher & Company, Inc., through the IPONET

web site, will solicit individuals who meet the "accredited investor" or sophisticated investor standards of Regulation D to register as "Accredited Investors" as a means of building a customer base and data base of accredited and sophisticated investors for W.J. Gallagher & Company, Inc. After an individual has been determined to meet the requirements of an Accredited Investor, the Accredited Investor may review offers for private offerings of securities from companies that have posted private offerings with IPONET in accordance with the rules otherwise applying under Regulation D. The solicitation for Accredited Investors will be independent of and will not be linked to or made specifically with reference to any pending private offering. Accredited Investors may not invest in private offerings that were posted on IPONET before the Accredited Investor registered. Under these circumstances, an offer of securities otherwise satisfying the requirements of Regulation D to accredited or sophisticated investors who have been independently and previously solicited as customers of W.J. Gallagher & Company, Inc. will not constitute a general solicitation or general advertising within the meaning of Regulation D Section 502(c).

The Facts

1. IPONET is a sole proprietorship, wholly owned by Leo J. Feldman ("Feldman"), an individual. W.J. Gallagher & company has established and will maintain a system to supervise the activities of Feldman, including those pursued through IPONET, that is reasonably designed to achieve compliance with all applicable securities laws and regulations, and with the rules of the NASD and any other applicable self-regulatory organization.

2. Feldman is a registered principal of W.J. Gallagher & Company, Inc. W.J. Gallagher & Company, Inc., conducts a general securities business, including participation in public offerings as a "selected dealer".

3. IPONET has established a home page and other linked pages (collectively "Site") on the World Wide Web located at http://www.zanax.com/iponet. IPONET intends to post on its Site "tombstone" advertisements meeting the requirements of Rule 134, together with the red herring prospectus meeting the requirements of Rule 430. Such "tombstone" advertisements and the red herring prospectuses will set forth the names of the underwriters,. In cases where W. J. Gallagher & Co., Inc. will not act as an underwriter, the name of W.J. Gallagher & Company, Inc., will not appear on the "tombstone" or on the red herring prospectus. The distribution of the "tombstone" advertisement and the red herring prospectus by the issuer and its underwriters through the Site will be in accordance with Release No. 33-7233, dated October 6, 1995. The Site will also set forth a separate statement substantially as follows: "The securities offered by [Name of Issuer] pursuant to the Preliminary Prospectus dated [insert date] are available through W.J. Gallagher & Company, Inc." In addition, in the case where W.J. Gallagher & Company, Inc., will not act as an underwriter, the Site will contain a statement substantially as follows: "W.J. Gallagher & Company, Inc., is not an underwriter of the securities of [Name of Issuer], but is

authorized to accept customer orders for the purchase of the securities." In such cases, W.J. Gallagher & Company, Inc., will not purchase any of the securities from the Issuer for resale, will not participate in any such undertaking directly or indirectly, will not participate in the management of the distribution of the issue or any part of the issue, and will not perform any function normally performed by an underwriter or underwriting syndicate. IPONET is not asking for the Division's view on whether IPONET or W.J. Gallagher & Co., Inc., is acting as an underwriter, since such determinations are made on a case by case basis.

4. The IPONET Site will also link to any "tombstone" advertisements or red herring prospectus the following statements from Rule 134 (b)(1) and (d), respectively:

> "A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This (communication) shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."
>
> "No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date. An indication of interest in response to this advertisement will involve no obligation or commitment of any kind."

5. The Site will also contain an electronic "coupon" or "card" linked to each red herring prospectus. A visitor to the Site will be invited to complete and send this electronic "coupon" or "card", via e-mail or communications link in the Site itself or by printing the coupon or card and sending it by regular carrier, indicating an interest in purchasing the security.

6. In cases where W.J. Gallagher & Company, Inc., will not act as an underwriter, but the securities will be sold through W.J. Gallagher & Company, Inc., as one of the "selected dealers", W.J. Gallagher & Company, Inc., will receive a commission which will not exceed the usual and customary distributors' or sellers' commission.

7. The Site contains a section entitled "Accredited Investor". Persons who have previously registered as a member of IPONET are invited to request registration with IPONET as an "Accredited Investor". These Accredited Investors will be added to W.J. Gallagher & Company, Inc.'s customer and data base. In order to register, the member must complete an on-line questionnaire substantially in the form of Exhibit A, which is designed to allow W.J. Gallagher & Company, Inc., and any potential issuer to determine, or to have a basis for a

reasonable belief, that a member is an "accredited investor" within the meaning of Regulation D, Rule 501(a) or a sophisticated investor under Rule 506. The questionnaire may be completed on-line in a secured manner or printed out and returned in hard copy. W.J. Gallagher & Company, Inc., will verify the information in the questionnaire to determine that the member is an Accredited Investor. Once a Member is qualified and registered as an "Accredited Investor", then the Accredited Investor will be given a password which will allow the Accredited Investor to access a password-protected page where private offerings will be posted and the Accredited Investor may access further information. However, the IPONET site will only allow an Accredited Investor access to those private offerings which are posted subsequent in time to the Accredited Investors qualification with IPONET. If the Accredited Investor has consented, then IPONET may contact the Accredited Investor in the future about new private offerings that are posted on IPONET.

8. The name of the Accredited Investor will be kept confidential by IPONET and W.J. Gallagher & Company, Inc., and will not be released to the issuers making the private offerings unless the Accredited Investor specifically consents to such release to a particular issuer. This consent may be given on-line.

9. Private issuers may post their private offerings in the password-protected section of IPONET. No mention or description of the issuer of any nature will be available on IPONET to any person, other than those who have previously qualified as Accredited Investors, who must use their password to enter the password-protected part of IPONET.

10. In cases where W.J. Gallagher & Company, Inc., is not acting as a broker-dealer, IPONET will charge a "listing fee" of a set amount. The listing fee will cover such items as design and graphics work, technical consulting regarding the listing, and historical popularity of the Site (analogous to the circulation history of newspapers). The listing fee will be independent of the size of the private offering, any investment made by Accredited Investors, and the number of hits to the Site after listing. (In such cases, W.J. Gallagher & Company, Inc., will be completely independent of the issuer and W.J. Gallagher & Company, Inc., will receive no compensation of any nature.) In cases where W.J. Gallagher & Company, Inc., is acting as a broker-dealer, IPONET will still receive only the listing fee and nothing more. Neither W.J. Gallagher & Company, Inc., nor IPONET will have an affiliation with or any interest of any kind in the issuer prior to or at the time of the offering of the private offering.

11. An Accredited Investor may invest only in private offerings which are posted on IPONET subsequent in time to the registration of the Accredited Investor with IPONET, and then only after a sufficient time has elapsed between the IPONET member's registration as an Accredited Investor and the inception of a private offering so that the registration as an Accredited Investor is not deemed to be a solicitation for a particular private offering.

12. Each issuer desiring to list a private offering with IPONET will covenant to

issues securities in a private offering in strict accordance with Regulation D. The obligation to assure compliance with Regulation D will rest upon the issuer.

Legal Analysis

1. W.J. Gallagher & Company, Inc. May Accept Indications of Interest Via E-Mail.

Rule 134 (d) provides as follows:

(d) A communication sent or delivered to any person pursuant to this rule which is accompanied or preceded by a prospectus which meets the requirements of Section 10 of the Act at the date of such communication, may solicit from the recipient of the communication an offer to buy the security or request the recipient to indicate, upon an enclosed or attached coupon or card, or in some other manner (emphasis added), whether he might be interested in the security, if the communication contains substantially the following statement:

> "No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date. An indication of interest in response to this advertisement will involve no obligation or commitment of any kind."

As described above in Facts, paragraphs 3 and 4, the Site will contain the notices required by Rule 134(b)(1) and (d) linked to any tombstone advertisement and red herring prospectus.

Rule 134(d) specifically contemplates that indications of interest may be accepted by a "coupon or card, or in some other manner". IPONET's electronic "coupon" or "card" may be sent directly from the Site or independently via e-mail, or printed in hard copy and sent via regular carrier. An electronic or e-mail indication of interest as described should qualify as a card or coupon in harmony with Release No. 33-7233, October 6, 1995, and certainly qualifies under the phrase "some other manner" and is entirely consistent with the 1933 Act and the Rules thereunder. See the excerpt from Release No. 33-7233 set forth below.

2. The Posting of a Notice of a Private Offering in a Password-protected Page of IPONET Accessible Only to IPONET Members Who Have Previously Qualified as Accredited Investors Does Not Involve Any Form of General Solicitation or General Advertising Within the Meaning of Regulation D Section 502(c).

In H.B. Shaine & Co., Inc., No Action Letter dated May 1, 1987, the staff indicated that a distribution by Shaine of questionnaires to prospective accredited and sophisticated investors to determine their suitability to participate in private offerings would not be deemed a "general solicitation or general advertisement". This view was premised upon several factors, including the use of a generic questionnaire and upon the elapse of a sufficient period of time between the completion of the questionnaire and the contemplation or inception of any particular offering.

As described above in Facts, paragraphs 7-11, W.J. Gallagher & Company, Inc., will follow substantially the same procedure as Shaine. The primary distinction appears to be simply that the questionnaire will be distributed electronically through the IPONET Site and the questionnaire may be returned either electronically through a link in the Site, through e-mail, or by hard copy, and one assumes that Shaine sent and received the questionnaires through traditional means. Similarly, the documents relating to a private offering to the Accredited Investors would be distributed electronically through the IPONET Site password protected page available only to Accredited Investors. The No Action Letter did not address the means of communication.

In Release No. 33-7233, the Commission stated:

> The Commission appreciates the promise of electronic distribution of information in enhancing investors' ability to access, research, and analyze information, and in facilitating the provision of information by issuers and others. The Commission believes that, given the numerous benefits of electronic distribution of information and the fact that in many respects it may be more useful to investors than paper, its use should not be disfavored. * * * Given the numerous benefits of electronic media, the Commission encourages further technological research, development and application. The Commission believes that the use of electronic media should be at least an equal alternative to the use of paper-based media. Accordingly, issuer or third party information that can be delivered in paper under the federal securities laws may be delivered in electronic format. (Emphasis added.)

Accordingly, since W.J. Gallagher & Company, Inc., will be soliciting questionnaires for Accredited Investors and will be distributing information on private offerings electronically that it could otherwise properly do by paper, the posting of private offerings in a password protected page of IPONET would not involve general solicitation or general advertisement within the meaning of Rule 502(c) under the circumstances discussed above.

Conclusion

We request that you concur with the conclusions set forth above. If you have questions or comments, please contact me directly.

DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

TELECOPIER TRANSMITTAL COVER SHEET

Date

Please deliver the following pages TO:

Name: Russell M. Frandsen

Firm: _____

Telecopier Number: 213 489-9263

Telephone Number: _____

FROM:

Name: Joe Babits

Corporation Finance/Office of ~~Disclosure Policy~~ Chief Counsel

Telecopy Number: (202) 942-9525

Telephone Number: (202) 942-~~2910~~ 2900

Total Number of Pages (including cover page) 2

Transmitted by: _____

Time Sent: _____

July 26, 1996

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: IPONET
Incoming letter dated July 23, 1996

Based on the facts presented, the Division's views are as follow:

(1) The reference in Rule 134(d) to "an enclosed or attached coupon or card, or in some other manner" would be equally applicable to the acceptance of indications of interest via electronic coupon or card as well as paper coupon or card by W.J. Gallagher & Company, Inc. ("Gallagher"). In this regard, we note your representation that the other requirements of Rule 134(d) will be satisfied in connection with the acceptance of such indications of interest.

(2) The qualification of accredited or sophisticated investors in the manner described and the posting of a notice of a private offering in a password-protected page of IPONET accessible only to IPONET members who have qualified as accredited investors would not involve any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) of Securities Act Regulation D. In reaching this conclusion, we note that (a) both the invitation to complete the questionnaire used to determine whether an investor is accredited or sophisticated and the questionnaire itself will be generic in nature and will not reference any specific transactions posted or to be posted on the password-protected page of IPONET; (b) the password-protected page of IPONET will be available to a particular investor only after Gallagher has made the determination that the particular potential investor is accredited or sophisticated; and (c) a potential investor could purchase securities only in transactions that are posted on the password-protected page of IPONET after that investor's qualification with IPONET. In this regard, we take no position as to whether the information obtained by Gallagher is sufficient to form a reasonable basis for believing an investor to be accredited or sophisticated.

Because these positions are based on the representations made to the Division in your letter, it should be noted that any different facts might require a different result.

Sincerely,

Joseph Babits
Special Counsel

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September 17, 1996

Ms. Gayle Oshima
Department of Corporations
980 9th Street
Suite 500
Sacramento, CA 95814

Re: IPONET / W.J. Gallagher & Company, Inc.

Dear Ms. Oshima:

I appreciated you taking the time to discuss the Section 25102(n) and the Internet offering issues with me today. I will write a more detailed letter concerning the proposed offering in the near future.

For you information, I am attaching a copy of the Texas Rule which exempts public offerings to accredited investors.

Very truly yours,

Russell M. Frandsen

RUSSELL M. FRANDSEN, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF

Texas Exempt Sales to Accredited Investors.

Sec. 139.16. Sales to individual accredited investors.

(a) In general. The State Securities Board, pursuant to the Securities Act, §5.T. exempts from the securities registration requirements of the Securities Act, §7, the offer and sale by the issuer or a registered dealer without advertising of any security to an individual accredited investor, or to any purchaser who the issuer has reasonable grounds to believe and after making reasonable inquiry shall believe to be an individual accredited investor, provided that such security is not part of the same distribution or offering as securities of the same issuer which have been registered or are proposed to be registered by pending application under the Securities Act §7."Advertising," as used in this subsection, does not include the use of limited use advertisements under subsection (e) of this section or the use of the type of printed material as permitted by §109.13(b) of this title (relating to Limited Offering Exemptions) in connection with an offering under the Act,§5.I.

(b) Who may purchase; who constitutes the issuer for purposes of selling securities.

(1) Individual accredited investors. For purposes of this section, the term "individual accredited investor" shall mean any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1 million or any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year. The term "individual accredited investor" shall also include any self-directed employee benefit plan with investment decisions made solely by persons that are "individual accredited investors" as defined in this paragraph and the individual retirement account of any such individual accredited investor.

(2) Issuer. For the purposes of this section, the term "issuer" includes any director, officer, or employee of the issuer provided all the following conditions are satisfied:

(A) the director, officer, or employee was not hired for the purpose of offering or selling such securities;

(B) the director's, officer's, or employee's activity involving the offer and sale of such securities is strictly incidental to his or her bona fide primary non-securities related work duties; and

(C) the director's, officer's, or employee's compensation is based solely on the performance of other such duties, i.e., the director, officer, or employee does not receive any compensation for offering for sale, selling, otherwise aiding in the sale of securities.

(c) Disqualifications. (1) No exemption under this section shall be available for the securities of any issuer if the issuer or registered dealer:

(A) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by the United States Securities and Exchange Commission or any state securities administrator;

(B) within the last five years, has been convicted of any felony in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit;

(C) is currently subject to any state or federal administrative enforcement order, entered within the last five years, finding fraud or deceit in connection with the purchase and sale of any security; or

(D) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in

connection with the purchase and sale of any security.

(2) For purposes of subsections (c) and (d) only, the term "issuer"includes:

(A) any of the issuer's predecessors or any affiliated issuer;

(B) any of the issuer's directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities(beneficial ownership meaning the power to vote or direct the vote and/or the power to dispose or direct the disposition of such securities);

(C) any of the issuer's promoters presently connected with the issuer in any capacity, including:

(i) any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives inconsideration of services or property, or both services and property, 10% or more of any class of securities of the issuer or 10% or more of the proceeds from the sale of any class of such securities; however, a person who receives such securities or property either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; or

(D) any underwriter of the issuer.

(3) For purposes of subsections (c) and (d) only, the term "registered dealer" includes any of the registered dealer's partners, directors, executive directors or beneficial owners of 10% or more of any class of its equity securities (beneficial ownership meaning the power to vote or direct the visioned/or the power to dispose or direct the disposition of such securities).

(d) Exceptions from Disqualification. The prohibitions of subsection (c)of this section shall not apply if:

(1) the party subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; or

(2) before the first offer under this section, the Securities Commissioner, or the court or regulatory authority that entered the order, judgement, or decree, waives the disqualification upon a showing of good cause.

(e) Limited use advertisements. Any limited use advertisement used in connection with an offering under this section must be filed with the Securities Commissioner ten days prior to use in this state. A limited use advertisement may be disseminated by any means, direct or indirect. A limited use advertisement shall contain only the statements required or permitted to be included therein by this subsection.

(1) A limited use advertisement shall contain the following items of information:

(A) a brief description of the securities to be offered (e.g. description of class, size of offering, price, percentage of commission);

(B) the name, address, and telephone number of the person to contact for additional information concerning the offering;

(C) the address where offering material may be obtained; and

(D) the following statement: "The securities have not been registered with or approved by the Texas Securities Commissioner and are being offered and sold pursuant to the exemption provided by §139.16 of the Rules and Regulations of the State Securities Board. This advertisement was filed with the Texas Securities Commissioner on or about (fill in date). The securities are being offered to, and may be purchased by, only those natural persons whose individual net worth, or joint net worth with that person's spouse, at the time of purchase of the

securities, exceeds $1 million or natural persons who have an individual income in excess of $200,000 in each of the two most recent years, or joint income with that persons's spouse in excess of $300,000 in each of those years, and who have a reasonable expectation of reaching that same income level in the current year."

(2) A limited use advertisement may include any one or more of the following items of information:

(A) the name and address of the issuer of the securities;

(B) a brief description of the business of the issuer; and

(C) the name and address of the registered dealer(s) acting on the issuer's behalf in connection with the offering.

(f) Any issuer relying on this exemption shall, upon written request, furnish to the Securities Commissioner the information furnished by the issuer or registered dealer to offerees. Any issuer relying on this exemption must maintain, for a period of at least three years, evidence of the basis for its belief that all purchasers were accredited investors at the time of purchase.

(g) Transactions exempt under this section may be combined with offers and sales exempt under The Securities Act, §5.H, and §109.3(c) of this title(relating to Sales to Financial Institutions and Certain Institutional investors under The Securities Act, §5.H). In this event, the statement required by subsection (e)(1)(D) may be modified to indicate that the securities are also being offered to eligible purchasers under §5.H and§109.3(c) of this title (relating to Sales to Financial Institutions and Certain Institutional Investors under The Securities Act, §5.H).

(h) Because this exemption permits limited use advertisements, use of this exemption under certain circumstances could result in other exemptions not being available for other sales due to prohibitions in such exemptions against public solicitation and advertisements. Therefore, issuers or registered dealers who use this exemption should take all necessary steps to document that any sales to person who are not individual accredited investors, as defined, were not made in response to a limited use advertisement. Users of this section should consult with experienced securities counsel, especially if they anticipate selling, within six months of the last sale made under this section, to any persons who are not individual accredited investors.

(I) The use of a limited use advertisement in compliance with this section and in connection with sales under this section will not render exemptions that prohibit public solicitations or advertisements unavailable to sales that are made more than six months after the use of the limited use advertisement.

(j) Should the offer and sale of securities fail, for any reason, to comply with all the terms and conditions for use of this section, the issuer may claim the availability of any other applicable exemption. A limited use advertisement that results in an offer to a person who is not an individual accredited investor within the meaning of this section does not alone result in loss of the exemption.

[Added eff. 4-21-95; Amended eff. 12-27-95.]

RADCLIFF, FRANDSEN, TRICKER & DONGELL

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RECEIVED
SEP 23 AM 10:48
DEPT OF CORPORATIONS
OFFICE OF POLICY

September 18, 1996

Ms. Gayle Oshima
Department of Corporations
980 9th Street
Suite 500
Sacramento, CA 95814

Re: IPONET / W.J. Gallagher & Company, Inc.

Dear Ms. Oshima:

I am enclosing a request for an interpretive opinion with respect to the specific Netter Digital Entertainment Inc. offering proposed to be conducted by W.J. Gallagher & Company, Inc. I appreciate your willingness to review this letter. If you have comments, please call me. I am willing to change the procedures set forth in the letter if it would help you in rendering an interpretive opinion, although I do not think changes are necessary. If you would like the wording in my letter changed, or additional recitals or disclaimers, please let me know

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF

RADCLIFF, FRANDSEN, TRICKER & DONGELL

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September 18, 1996

VIA TELECOPIER

Ms. Gayle Oshima
Department of Corporations
980 9th Street, Suite 500
Sacramento, California 95814

Re: IPONET/W. J. Gallagher & Company, Inc.

Dear Ms. Oshima:

Factual Background

W. J. Gallagher & Co., Inc. ("Gallagher") intends to assist Netter Digital Entertainment ("Netter") with a best efforts offering pursuant to Corporate Securities Law Section 25102(n). The offering will consist of preferred stock, convertible into Common Stock. Each share of preferred stock will have the same voting rights as each share of Common Stock. There is and will be only one class of voting Common Stock outstanding.

Netter is a Delaware Corporation located at 5200 Lankershim Boulevard, Suite 280, North Hollywood, California 91691 and is subject to Corporations Code Section 2115. Netter's business includes the production of television and motion picture programming, including the award-winning "Babylon V" television series.

Netter, through Gallagher, intends to offer the preferred stock to residents of California, Texas, New York, and several other states. In Texas, the offering will be made under Texas Regulations Section 139.16 (e) ("Texas Regulation"). In New York, the offering will be made pursuant to the State Notice and the Further State Notice. In other states, Netter will file an application to register the preferred stock by qualification. Pursuant to applicable exemptions

in those states, Netter intends to circulate the offering materials in those states prior to the time when the preferred stock is actually registered. The offering materials would be circulated at the time Netter commences the offering in California, Texas, and New York.

Conduct of the Offering

Gallagher intends to conduct the offering of the Preferred Stock through IPONET. For a description of the operation of IPONET, please see my letter to Wallace Wong dated July 31, 1996, a copy of which is attached to this letter. Specifically, the offering will be conducted on IPONET as follows:

1. The IPONET Website (http://www.zanax.com/iponet) contains a "button" for "Public Offerings." This button leads to a "tombstone" which will simply contain Netter's corporate logo, name of the stock offered, and instructions to "click" on the tombstone to receive more information.

2. After "clicking" on the tombstone, the viewer is lead directly to the "general announcement of proposed offering" ("General Announcement").

3. The General Announcement will contain those items required by section 25102(n)(5)(A) and the information permitted to be included pursuant to Section 25102(n)(5)(B). The General Announcement will be text only, including any corporate logo and trademarks, and it will not include audio or video components.

4. The General Announcement will also serve as the "limited use advertisement" required by the Texas Regulation. For the most part, the "General Announcement" required by California law and the "limited use advertisement" required by the Texas Regulation will contain the same information. However, there are some differences, such as the required legends. Gallagher intends to include in the General Announcement a section for the information that applies to Texas residents only under a label substantially in the form "for Texas residents." Gallagher intends to include the information specifically for California residents in a similar manner. To the extent that other states require specific legends or information, such information would be provided under an appropriate heading for that state.

5. In addition, the General Announcement will contain "links" to the following items: (A) Qualified Purchaser Questionnaire. (B) Financial Advisor Questionnaire. (C) "Offering Disclosure Statement" meeting the disclosure requirements of Regulation D ("Prospectus"). (D) An application to open an account at Gallagher. (E) A button to make an electronic indication of interest to purchase these securities. (F) Subscription Agreement. (G) If other broker-dealers participate, a link to such broker-dealers so that customers of such broker-

dealers may acquire the preferred stock through such broker-dealers. Each of these items may be printed out by the viewer and may be returned to Gallagher in paper form. Alternatively, the documents may be completed by the viewer "on line" and returned to Gallagher electronically.

6. Once Gallagher has received the foregoing documents, either in paper format or electronically, Gallagher will then determine whether the respondent is a qualified purchaser. Only after determining whether a respondent is a qualified purchaser will Gallagher solicit the respondent, either by telephone or e-mail.

7. Each questionnaire will provide for the respondent to designate whether the respondent wishes to receive the Prospectus in paper form or electronically. If the respondent requests the Prospectus in paper form, Gallagher will send the Prospectus to him in paper form.

8. Netter will file the notices required by Section 25102(n)(7).

9. There are many special interest groups ("SIGs") on the internet which are interested in "Babylon V" and the business of Netter. Netter also maintains one or more websites. Gallagher and Netter intend to place notices or links in the SIGs and relevant websites ("Web Notices") directing interested persons to the IPONET Website where the General Announcement will be available.

Interpretive Opinion Request

Gallagher requests an interpretive opinion on the following issues:

1. The posting of the General Announcement on the IPONET Website constitutes "publishing" within the meaning of Section 25102(n)(5)(A).

2. The General Announcement, which will have the form of text and logo only, constitutes a "written document" within the meaning of Section 25102(n)(5)(A).

3. The inclusion in the General Announcement of specific legends or other information required under the laws of other states will not violate Section 25102(n)(5)(C), which is the limitation on information not prescribed in subdivision 25102(n)(5).

4. The Web Notices which direct interested persons to the IPONET Website in order to view the General Announcement, do not themselves constitute a "General Announcement" within the meaning of subdivision 25102(n)(5)(A) and the use of the Web Notices does not render the exemption provided by subsection 25102(n) unavailable.

5. A natural person purchaser who indicates in the Qualified Purchaser Questionnaire that such person desires to receive the Prospectus electronically through the IPONET Website or by e-mail shall be deemed to have "received" the Prospectus by virtue of access to the prospectus on the IPONET Website.

Legal Justification and Conclusions

1. Under Corporate Securities Law Section 25014, the term "publish" means "publicly to issue or circulate by newspaper, mail, radio or television, or otherwise to disseminate to the public." A posting of the General Announcement on the IPONET Website will be available to every member of the public which has access to the internet. In addition, e-mail messages to members of the public inviting them to view the General Announcement at the IPONET Website will further bring the General Announcement to the attention of members of the public. Accordingly, the General Announcement would be disseminated to the public and should be deemed "published" within the meaning of Section 25102(n).

2. California General Corporation Law Section 195 defines the term "written" to include "facsimile and telegraphic communication". With today's telecommunications devices, written documents may be delivered in facsimile and telegraphically for viewing on a monitor. Similarly, documents delivered electronically through IPONET may be viewed electronically on a monitor. Furthermore, the Securities and Exchange Commission Release No. 33-7233 indicated that "the use of electronic media should be at least an equal alternative to the use of paper-based media. Accordingly, issuer or third party information that can be delivered in paper under the Federal Securities Laws may be delivered in an electronic format."

Gallagher intends to deliver the General Announcement electronically in a form that may be read on a monitor screen or may be printed out and read on paper. In each case the "writing" appears on some medium. Writing is simply the placement of letters in some medium that may be perceived to form words and sentences. In this sense, there is no essential difference between paper as a medium for displaying the writing or a computer monitor as a medium for displaying writing. Accordingly, the delivery of the General Announcement in electronic form such that it may be displayed in writing on a monitor constitutes a "written document" within the meaning of Section 25102(n)(5)(A).

3. The inclusion of legends or other matter required by the laws or regulations of other states, e.g., Texas, do not relate to the substance of the proposed offering. Section 25102(n)(5)(C) indicates that the General Announcement should contain only the "information" set forth in subparagraph (5). The antecedent to the word "information" includes information pertinent to the nature of the offering, the nature of the purchasers, the type of security, and the business of the issuer. Thus the term "information" refers to matters which are of substantive

import with respect to the issuer and the offering itself. However, the legends and other matter required by the laws and regulations of other states do not contain any description of the company and do not contain any substantive information with respect to a purchaser's investment decision. Accordingly, such legends and other matters required by the laws and regulations of other states should not be deemed "information" within the meaning of Section 25102(n)(5)(C). Accordingly, the inclusion in the General Announcement of such legends and other matters required by the laws and regulations of other states would not violate the prohibition of subdivision (5)(C) precluding other "information" in the General Announcement.

4. Netter and Gallagher intend to use the Web Notices described above to inform interested persons that the General Announcement may be accessed, read, and retrieved at the IPONET Website. These Web Notices may contain the URL for the IPONET Website and a "link" to the Website. Since the Web Notices, themselves, will not allow a person to obtain a Prospectus, give an indication of interest, retrieve a subscription agreement, or otherwise take any step in connection with the purchase of the preferred stock, there is no risk that a potential investor could be mislead by the Web Notice. An interested potential investor must go to the IPONET Website to learn more about the offering. At the IPONET Website, a potential investor will receive the General Announcement, which will contain the information required by subsection 25102(n). Since the Web Notices will not contain the substantive information required by subdivision 25102(n)(5), and since their only function is to lead interested persons to the General Announcement, the Web Notices, themselves, should not be deemed to constitute a "General Announcement" within the meaning of subdivision 25102(n)(5). Accordingly, the use of the Web Notices would not violate the requirement of subdivision 25102(n)(5)(A) that a General Announcement of the proposed offering may be published by written document only and that the General Announcement must contain the prescribed information.

5. Under 25102(n)(4), each natural person purchaser should "receive" the Prospectus five (5) days before the securities are sold or a commitment to purchase is accepted from such purchaser. The common meaning of the word "receive" in this context is that a person has the ability, at will, to have access to and to read the Prospectus. A person who has access to the internet and to the IPONET Website will have access to the Prospectus at will. That person may read the Prospectus on the monitor screen or may print out the Prospectus for reading on paper. If a person has indicated in the written questionnaire that such person desires to receive the Prospectus electronically, then such person should be deemed to have "received" the Prospectus since such person has access to it at will. Furthermore, the Securities and Exchange Commission in Release No. 33-7233, October 6, 1995, explicitly indicates that the delivery of a Prospectus electronically to an investor who has consented to receive the information electronically will have satisfied the "delivery" requirement of the federal securities laws with

respect to the delivery of a Prospectus. Accordingly, through the IPONET Website, a purchaser who has consented to receiving the Prospectus electronically should be deemed to have "received" the Prospectus within the meaning of Section 25102(n)(4).

Conclusion

We request that you concur with the conclusions set forth above. If you have questions or comments, please contact me directly.

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF:kn
Enclosure

RADCLIFF, FRANDSEN, TRICKER & DONGELL

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RUSSELL M. FRANDSEN
73314.2250@COMPUSERVE.COM
RMFRANDSEN@AOL.COM

September 24, 1996

VIA TELECOPIER
(916) 322-5875

Ms. Gayle Oshima
Department of Corporations
980 9th Street, Suite 500
Sacramento, California 95814

RECEIVED
DEPT OF CORPORATIONS
OFFICE OF POLICY
96 SEP 30 AM 9:55

Re: W. J. Gallagher & Company, Inc./
Netter Digital Entertainment, Inc.

Dear Ms. Oshima:

I am enclosing copies of the Web pages on the IPONET Website in connection with the pending Gallagher/Netter 25102(n) offering.

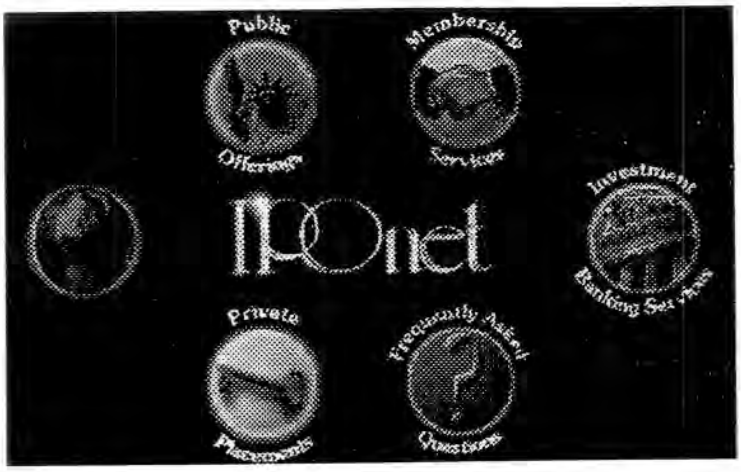
I will forward to you the draft of the "general announcement" within the next day or so. If you have questions or comments, please call my office and ask for Jeffrey Mayes in my absence.

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF:kn

Enclosure



Public Offerings... Membership Services...Private Placements...

Frequently Asked Questions...Investment Banker Services

Welcome to the only internet site cleared by the United States Securities & Exchange Commission, to "SELL" Initial Public Offerings, and other "New" securities online. IPOnet intends worldwide presentation and assistance with the sales of Public and Private Offerings, as well as Secondary Offerings by having investors designated according to S.E.C. guidlines.

After entering the site, visitors may view a full page Announcement or Tombstone by clicking an Offering Icon. Double clicking this full page announcement, will allow Registered Members to request a Prospectus or documentation, directly from the Underwriters, or a Selected Dealer.

Members of IPOnet with funded associated Broker/Dealer accounts, may make Electronic Indications of Interest though our site, and purchase the security at the offering price, the day it goes public.

Membership is Free for **Qualified Investors**

CONTINUE

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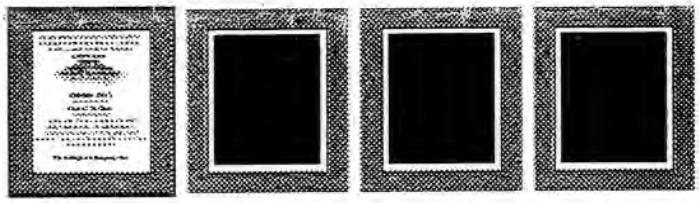
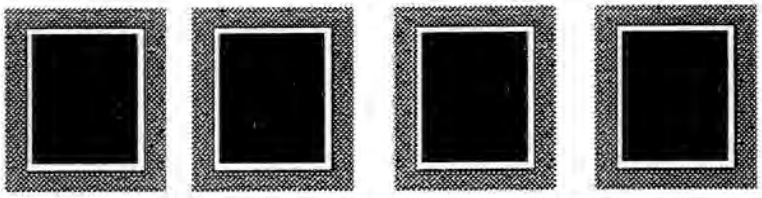
PUBLIC OFFERINGS



Sample | New Financing | Secondary Offering | New Financing



New Financing | New Financing | New Financing | New Financing

[Click an offering icon and a full page announcement will appear]

Securities Offered Through

W.J. Gallagher & Company, Inc.

Securities may also be offered by other Broker/Dealers
(Please see individual offering)

" W.J. Gallagher & Company, Inc. is not registered in the following states, therefore residents of these states may not receive sales material or, make indications through W.J. Gallagher & Company, Inc. or its representatives."

AR. AZ. DE. ID. MA. MN. ND. NH. NM. PA. RI. TN. VT. WV.

Information contained herein is subject to completion or amendments. A Registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This (communication) shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws

6600 5

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TELECOMMUNICATIONS COVER LETTER

Oct 2, 1996 8:38 AM

To: Ms. Gayle OShima — Fax no. 916-322-5875

From: Russell M. Frandsen — Client no.: 1195

Re: W.J. Gallagher & Company, Inc. / Netter Digital Entertainment, Inc.

Message: I am setting attaching the proposed General Announcement for use by W.J. Gallagher & Company, Inc., and Netter Digital Entertainment, Inc., in the pending offering under Section 25102(n). I would appreciate your comments and feedback. You will note that we have included the Texas legend, which we believe is consistent with the the California statute.

Total Pages Including Cover Page: 4

Please call if you do not receive all of the pages.

PLEASE NOTE: The information contained in this facsimile is only for the personal and confidential use of the addressee and might be a privileged and confidential attorney-client communication. If you are not the addressee or the addressee's agent, you have received this facsimile in error. Please do not read or review it. We do not waive any privilege attaching to this facsimile. Any dissemination, distribution or copying of this facsimile is Prohibited. Please notify us of any error as soon as possible at the telephone number shown and then return the facsimile to us by mail at the address shown above. Thank you for your cooperation.

NETTER DIGITAL ENTERTAINMENT, INC.

IS OFFERING UP TO

714,285 Shares ($5,000,000)

OF

Series A Cumulative Convertible Preferred Stock at $7.00 per share

WITH A

Minimum Purchase of 1,000 Shares ($7,000)

The Company: Netter Digital Entertainment, Inc. ("Netter Digital"), whose common stock is traded on the Nasdaq Small Cap Market (Symbol: NETT), is a digital production studio combining high technology with entertainment to create television series, movies, documentaries and multimedia productions. The Company specializes in creating science fiction programming which combines live action with computer graphics, as well as family and children's entertainment. The Company recently commenced its fourth season of production of the Hugo Award and two-time Emmy-Award winning "Babylon 5." Upon raising the minimum in this offering, the Company intends to substantially expand its Technology and Production Services Division by completing a merger with Videssence, Inc which designs, manufactures and distributes lighting products, incorporating its patented SRGB light technology, for the illumination of studios, stages and other production environments in the sound stage, motion picture, theater and theme park industries.

The Offering: The offering is being made on a "best efforts," all or none basis, for the minimum offering amount of 285,714 shares of Series A Preferred Stock ($2,000,000) and on a "best efforts" basis for any amounts raised above the minimum up to a maximum amount of 714,285 shares of Series A Preferred Stock ($5,000,000). The basic terms of the Series A Preferred Stock are as follows:

(1) **Dividend.** Dividends on the shares of Series A Preferred Stock are cumulative from the date of issue and are payable semi-annually in shares of Series A Preferred Stock, commencing six months after the first closing of the offering, in an amount per share equal to 10% per annum (i.e. for every 10 shares of Series A Preferred Stock, 1 share of Series A Preferred Stock is paid as a dividend each year).

(2) **Conversion Rights.** Each share of Series A Preferred Stock is convertible at any time at the option of the holder thereof into one share of Common Stock, subject to adjustment in certain circumstances.

(3) **Redemption.** The Series A Preferred Stock is redeemable, in whole or in part, at the option of the Company, for cash at a redemption price equal to $7.00 per share.

The Placement Agent. W.J Gallagher & Co., Inc. will act as the Placement Agent for the offering and will receive, among other compensation, a placement fee of 10% of the gross proceeds of the offering.

Contact Persons. For more complete information about the Company and the Series A Preferred Stock, including a copy of the offering memorandum and a subscription agreement, please contact _____ at W.J. Gallagher & Co., Inc., 747 East Green Street, Pasadena, California 91101, phone (213)681-0601 or (818) 304-0057 or Fran Daniels, Director of Investor Relations, at Financial Sciences of America, 9255 Doheny Rd., Suite A, Los Angeles, California 90069, phone (310)278-4413.

FOR TEXAS RESIDENTS ONLY

THE SECURITIES HAVE NOT BEEN REGISTERED WITH OR APPROVED BY THE TEXAS SECURITIES COMMISSIONER AND ARE BEING OFFERED AND SOLD PURSUANT TO THE EXEMPTION PROVIDED BY SECTION 139.16 OF THE RULES AND REGULATIONS OF THE STATE SECURITIES BOARD. THIS ADVERTISEMENT WAS FILED WITH THE TEXAS SECURITIES COMMISSIONER ON OR ABOUT SEPTEMBER 13, 1996. THE SECURITIES ARE BEING OFFERED TO, AND MAY BE PURCHASED BY, ONLY THOSE NATURAL PERSONS WHOSE INDIVIDUAL NET WORTH, OR JOINT NET WORTH WITH THAT PERSON'S SPOUSE, AT THE TIME OF PURCHASE OF SECURITIES, EXCEEDS $1 MILLION OR NATURAL PERSONS WHO HAVE AN INDIVIDUAL NET INCOME IN EXCESS OF $200,000 IN EACH OF THE TWO MOST RECENT YEARS, OR JOINT INCOME WITH THAT PERSON'S SPOUSE IN EXCESS OF $300,000 IN EACH OF THOSE YEARS, AND WHO HAVE A REASONABLE EXPECTATION OF REACHING THAT SAME INCOME LEVEL IN THE CURRENT YEAR. NOTWITHSTANDING THE FOREGOING, EACH PURCHASER MUST ALSO SATISFY THE MINIMUM REQUIREMENTS APPLICABLE TO PURCHASERS IN STATES OTHER THAN TEXAS, AS SET FORTH BELOW.

FOR RESIDENTS OF STATES OTHER THAN TEXAS, INCLUDING CALIFORNIA

NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED OR WILL BE ACCEPTED HEREBY. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE PURCHASER INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND. NO SALES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL FIVE BUSINESS DAYS AFTER THE DELIVERY OF THE OFFERING MEMORANDUM AND SUBSCRIPTION DOCUMENT TO THE PROSECTIVE PURCHASER. SALES OF SECURITIES WILL BE MADE ONLY TO QUALIFIED PURCHASERS OR OTHER PERSONS THE COMPANY REASONABLY BELIEVES, AFTER REASONABLE INQUIRY, TO BE QUALIFIED PURCHASERS. A CORPORATION, PARTNERSHIP, OR OTHER ORGANIZATION SPECIFICALLY FORMED FOR THE PURPOSE OF ACQUIRING THE SECURITIES OFFERED BY THE COMPANY IN RELIANCE UPON THIS EXEMPTION MAY BE A QUALIFIED PURCHASER IF EACH OF THE EQUITY OWNERS OF THE CORPORATION, PARTNERSHIP, OR OTHER ORGANIZATION IS A QUALIFIED PURCHASER. QUALIFIED PURCHASERS INCLUDE THE FOLLOWING:

(A) A PERSON DESIGNATED IN SECTION 260.102.13 OF TITLE 10 OF THE CALIFORNIA CODE OF REGULATIONS.

(B) A PERSON DESIGNATED IN SUBDIVISION (I) OR ANY RULE OF THE COMMISSIONER ADOPTED THEREUNDER.

(C) A PENSION OR PROFIT-SHARING TRUST OF THE ISSUER, A SELF-EMPLOYED INDIVIDUAL RETIREMENT PLAN, OR AN INDIVIDUAL RETIREMENT ACCOUNT, IF THE INVESTMENT DECISIONS MADE ON BEHALF OF THE TRUST, PLAN, OR ACCOUNT ARE MADE SOLELY BY PERSONS WHO ARE QUALIFIED PURCHASERS.

(D) AN ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, CORPORATION, MASSACHUSETTS OR SIMILAR BUSINESS TRUST, OR

PARTNERSHIP, EACH WITH TOTAL ASSETS IN EXCESS OF FIVE MILLION DOLLARS ($5,000,000) ACCORDING TO ITS MOST RECENT AUDITED FINANCIAL STATEMENTS.

(E) A NATURAL PERSON WHO, EITHER INDIVIDUALLY OR JOINTLY WITH THE PERSON'S SPOUSE, (I) HAS A MINIMUM NET WORTH OF TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000) AND HAD, DURING THE IMMEDIATELY PRECEDING TAX YEAR, GROSS INCOME IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS ($100,000) AND REASONABLY EXPECTS GROSS INCOME IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS ($100,000) DURING THE CURRENT TAX YEAR OR (II) HAS A MINIMUM NET WORTH OF FIVE HUNDRED THOUSAND DOLLARS ($500,000). "NET WORTH" SHALL BE DETERMINED EXCLUSIVE OF HOME, HOME FURNISHINGS, AND AUTOMOBILES. OTHER ASSETS INCLUDED IN THE COMPUTATION OF NET WORTH MAY BE VALUED AT FAIR MARKET VALUE.

EACH SUCH NATURAL PERSON, BY REASON OF HIS OR HER BUSINESS OR FINANCIAL EXPERIENCE, OR THE BUSINESS OR FINANCIAL EXPERIENCE OF HIS OR HER PROFESSIONAL ADVISOR, WHO IS UNAFFILIATED WITH AND WHO IS NOT COMPENSATED, DIRECTLY OR INDIRECTLY, BY THE ISSUER OR ANY AFFILIATE OR SELLING AGENT OF THE ISSUER, CAN BE REASONABLY ASSUMED TO HAVE THE CAPACITY TO PROTECT HIS OR HER INTERESTS IN CONNECTION WITH THE TRANSACTION. THE AMOUNT OF THE INVESTMENT OF EACH NATURAL PERSON SHALL NOT EXCEED 10 PERCENT OF THE NET WORTH, AS DETERMINED BY THIS SUBPARAGRAPH, OF THAT NATURAL PERSON.

(F) ANY OTHER PURCHASER DESIGNATED AS QUALIFIED BY RULE OF THE COMMISSIONER.

of any such State.

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00193 ROMA, ITALY
TELEPHONE (39) 06-323-5588

RUSSELL M. FRANDSEN
73314,2250@COMPUSERVE.COM
RMFRANDSEN@AOL.COM

October 4, 1996

RECEIVED
DEPT OF CORPORATIONS
OFFICE OF POLICY
96 OCT 37 PM 3:19

VIA TELECOPIER

Ms. Gayle Oshima
Department of Corporations
980 9th Street, Suite 500
Sacramento, California 95814

Re: IPONET/W. J. Gallagher & Company, Inc.

Dear Ms. Oshima:

Factual Background

W. J. Gallagher & Co., Inc. ("Gallagher") intends to assist Netter Digital Entertainment ("Netter") with a best efforts offering pursuant to Corporate Securities Law Section 25102(n). The offering will consist of preferred stock, convertible into Common Stock. Each share of preferred stock will have the same voting rights as each share of Common Stock. There is and will be only one class of voting Common Stock outstanding.

Netter is a Delaware Corporation located at 5200 Lankershim Boulevard, Suite 280, North Hollywood, California 91691 and is subject to Corporations Code Section 2115. Netter's business includes the production of television and motion picture programming, including the award-winning "Babylon V" television series.

Netter, through Gallagher, intends to offer the preferred stock to residents of California, Texas, New York, and several other states. In Texas, the offering will be made under Texas Regulations Section 139.16 (e) ("Texas Regulation"). In New York, the offering will be made pursuant to the State Notice and the Further State Notice. In other states, Netter will file an application to register the preferred stock by qualification. Pursuant to applicable exemptions

in those states, Netter intends to circulate the offering materials in those states prior to the time when the preferred stock is actually registered. The offering materials would be circulated at the time Netter commences the offering in California, Texas, and New York.

Conduct of the Offering

Gallagher intends to conduct the offering of the Preferred Stock through IPONET. For a description of the operation of IPONET, please see my letter to Wallace Wong dated July 31, 1996, which I previously forwarded to you. Specifically, the offering will be conducted on IPONET as follows:

1. The IPONET Website (http://www.zanax.com/iponet) contains a "button" for "Public Offerings." This button leads to a notice which will simply contain Netter's corporate logo, name of the stock offered, and instructions to "click" on the notice to receive more information.

2. After "clicking" on the notice, the viewer is lead directly to the "general announcement of proposed offering" ("General Announcement").

3. The General Announcement will contain those items required by section 25102(n)(5)(A) and the information permitted to be included pursuant to Section 25102(n)(5)(B). The General Announcement will be text only, including any corporate logo and trademarks, and it will not include audio or video components.

4. The General Announcement will also serve as the "limited use advertisement" required by the Texas Regulation. For the most part, the "General Announcement" required by California law and the "limited use advertisement" required by the Texas Regulation will contain the same information. However, there are some differences, such as the required legends. Gallagher intends to include in the General Announcement a section for the information that applies to Texas residents only under a label substantially in the form "for Texas residents." Gallagher intends to include the information specifically for California residents in a similar manner. To the extent that other states require specific legends or information, such information would be provided under an appropriate heading for that state.

5. In addition, the General Announcement will contain "links" to the following items: (A) Instructions to Investors. (B) Qualified Purchaser Questionnaire. (C) Financial Advisor Questionnaire. (D) "Offering Disclosure Statement" meeting the disclosure requirements of Regulation D ("Prospectus"). (E) An application to open an account at Gallagher. (F) Subscription Agreement. (G) If other broker-dealers participate, a link to such broker-dealers so that customers of such broker-dealers may acquire the preferred stock through

such broker-dealers. Each of these items may be printed out by the viewer and may be returned to Gallagher in paper form. Alternatively, the documents may be completed by the viewer "on line" and returned to Gallagher electronically.

6. Once Gallagher has received the foregoing documents, either in paper format or electronically, either the Company, or Gallagher acting on behalf of the Company, will then determine whether the respondent is a qualified purchaser. Only after determining whether a respondent is a qualified purchaser will Gallagher solicit the respondent, either by telephone or e-mail.

7. Each questionnaire will provide for the respondent to designate whether the respondent wishes to receive the Prospectus in paper form or electronically. If the respondent requests the Prospectus in paper form, Gallagher will send the Prospectus to the respondent in paper form.

8. Netter will file the notices required by Section 25102(n)(7).

9. There are many special interest groups ("SIGs") on the internet which are interested in "Babylon V" and the business of Netter. Netter also maintains one or more websites. Gallagher and Netter intend to place notices or links in the SIGs and relevant websites ("Web Notices") directing interested persons to the IPONET Website where the General Announcement will be available. The Web Notice will be in substantially the following form: "Netter Digital Entertainment, Inc., the producer of Babylon V television series, is offering shares of Series A convertible preferred stock. For more information, see "www.thestation.com" or www.zanax.com/iponet."

Interpretive Opinion Request

Gallagher requests an interpretive opinion on the following issues:

1. The posting of the General Announcement on the IPONET Website constitutes "publishing" within the meaning of Section 25102(n)(5)(A).

2. The General Announcement, which will have the form of text and logo only, constitutes a "written document" within the meaning of Section 25102(n)(5)(A).

3. The inclusion in the General Announcement of specific legends or other information required under the laws of other states will not violate Section 25102(n)(5)(C), which is the limitation on information not prescribed in subdivision 25102(n)(5).

4. The Web Notices which direct interested persons to the IPONET Website in order to view the General Announcement, do not themselves constitute a "General Announcement" within the meaning of subdivision 25102(n)(5)(A) and the use of the Web Notices does not render the exemption provided by subsection 25102(n) unavailable.

5. A natural person purchaser who indicates in the Qualified Purchaser Questionnaire that such person desires to receive the Prospectus electronically through the IPONET Website or by e-mail shall be deemed to have "received" the Prospectus by virtue of access to the prospectus on the IPONET Website.

Legal Justification and Conclusions

1. Under Corporate Securities Law Section 25014, the term "publish" means "publicly to issue or circulate by newspaper, mail, radio or television, or otherwise to disseminate to the public." A posting of the General Announcement on the IPONET Website will be available to every member of the public which has access to the internet. In addition, e-mail messages to members of the public inviting them to view the General Announcement at the IPONET Website will further bring the General Announcement to the attention of members of the public. Accordingly, the General Announcement would be disseminated to the public and should be deemed "published" within the meaning of Section 25102(n).

2. California General Corporation Law Section 195 defines the term "written" to include "facsimile and telegraphic communication". With today's telecommunications devices, written documents may be delivered in facsimile and telegraphically for viewing on a monitor. Similarly, documents delivered electronically through IPONET may be viewed electronically on a monitor. Furthermore, the Securities and Exchange Commission Release No. 33-7233 indicated that "the use of electronic media should be at least an equal alternative to the use of paper-based media. Accordingly, issuer or third party information that can be delivered in paper under the Federal Securities Laws may be delivered in an electronic format."

Gallagher intends to deliver the General Announcement electronically in a form that may be read on a monitor screen or may be printed out and read on paper. In each case the "writing" appears on some medium. Writing is simply the placement of letters in some medium that may be perceived to form words and sentences. In this sense, there is no essential difference between paper as a medium for displaying the writing or a computer monitor as a medium for displaying writing. Accordingly, the delivery of the General Announcement in electronic form such that it may be displayed in writing on a monitor constitutes a "written document" within the meaning of Section 25102(n)(5)(A).

3. The inclusion of legends or other matter required by the laws or regulations of other states, e.g., Texas, do not relate to the substance of the proposed offering. Section 25102(n)(5)(C) indicates that the General Announcement should contain only the "information" set forth in subparagraph (5). The antecedent to the word "information" includes information pertinent to the nature of the offering, the nature of the purchasers, the type of security, and the business of the issuer. Thus the term "information" refers to matters which are of substantive import with respect to the issuer and the offering itself. However, the legends and other matter required by the laws and regulations of other states do not contain any description of the company and do not contain any substantive information with respect to a purchaser's investment decision. Accordingly, such legends and other matters required by the laws and regulations of other states should not be deemed "information" within the meaning of Section 25102(n)(5)(C). Accordingly, the inclusion in the General Announcement of such legends and other matters required by the laws and regulations of other states would not violate the prohibition of subdivision (5)(C) precluding other "information" in the General Announcement.

4. Netter and Gallagher intend to use the Web Notices described above to inform interested persons that the General Announcement may be accessed, read, and retrieved at the IPONET Website. These Web Notices may contain the URL for the IPONET Website and a "link" to the Website. Since the Web Notices, themselves, will not allow a person to obtain a Prospectus, give an indication of interest, retrieve a subscription agreement, or otherwise take any step in connection with the purchase of the preferred stock, there is no risk that a potential investor could be mislead by the Web Notice. An interested potential investor must go to the IPONET Website to learn more about the offering. At the IPONET Website, a potential investor will receive the General Announcement, which will contain the information required by subsection 25102(n). Since the Web Notices will not contain the substantive information required by subdivision 25102(n)(5), and since their only function is to lead interested persons to the General Announcement, the Web Notices, themselves, should not be deemed to constitute a "General Announcement" within the meaning of subdivision 25102(n)(5). Accordingly, the use of the Web Notices would not violate the requirement of subdivision 25102(n)(5)(A) that a General Announcement of the proposed offering may be published by written document only and that the General Announcement must contain the prescribed information. Finally, the use of the Web Notice is otherwise not prohibited under the exemption for advertisements set forth in subdivision 25300(b)(2).

5. Under 25102(n)(4), each natural person purchaser should "receive" the Prospectus five (5) days before the securities are sold or a commitment to purchase is accepted from such purchaser. The common meaning of the word "receive" in this context is that a person has the ability, at will, to have access to and to read the Prospectus. A person who has access to the internet and to the IPONET Website will have access to the Prospectus at will. That person may read the Prospectus on the monitor screen or may print out the Prospectus for reading on

paper. If a person has indicated in the written questionnaire that such person desires to receive the Prospectus electronically, then such person should be deemed to have "received" the Prospectus since such person has access to it at will. Furthermore, the Securities and Exchange Commission in Release No. 33-7233, October 6, 1995, explicitly indicates that the delivery of a Prospectus electronically to an investor who has consented to receive the information electronically will have satisfied the "delivery" requirement of the federal securities laws with respect to the delivery of a Prospectus. Accordingly, through the IPONET Website, a purchaser who has consented to receiving the Prospectus electronically should be deemed to have "received" the Prospectus within the meaning of Section 25102(n)(4).

Conclusion

We request that you concur with the conclusions set forth above. If you have questions or comments, please contact me directly.

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF:kn

6600

RADCLIFF, FRANDSEN, TRICKER & DONGELL

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October 9, 1996

Ms. Gayle Oshima
Department of Corporations
980 9th Street
Suite 500
Sacramento, CA 95814

RECEIVED
DEPT OF CORPORATIONS
OFFICE OF POLICY
96 OCT 15 AM 10:09

Re: IPONET / W.J. Gallagher & Company, Inc.

Dear Ms. Oshima:

In connection with the request for an interpretive letter regarding Code Section 25102(n), I am providing the following additional information.

Netter Digital Entertainment, Inc. completed its initial public offering in November, 1995. It is currently listed on the NASDAQ SmallCap Market and is a reporting company.

Netter and W.J. Gallagher & Company decided to raise additional capital through a 25102(n) offering because, in their judgment, such capital could be raised at lower cost and more quickly than through conducting another SEC registered public offering. I believe this is the very intent of the statute.

Since Netter and Gallagher intend to use the Internet in connection with the offering, and since this is a new area of experience, I have advised them to proceed carefully and to fully observe the letter, spirit, and nuances of the law. Accordingly, we obtained a no action letter from the SEC, which I have previously forwarded to you. I submitted a request for an interpretive letter through Wallace M. Wong in the Department's Los Angeles office, and then a more comprehensive request through you. Finally, I have written to the NASD seeking their concurrence that a 25102(n) offering is not a "public" offering within the meaning of the NASD's Corporate Financing Rule. We are attempting to conduct this offering in the open and above-

board in every way.

I am enclosing for your information the letter which I wrote to Mr. Charles Bennett of the NASD setting forth my view that a 25102(n) offering is not a "public" offering within the meaning of the NASD's Corporate Financing Rule.

If you have questions or comments, please call me directly.

Very truly yours,

Russell M. Frandsen, of
RADCLIFF, FRANDSEN, TRICKER & DONGELL

RMF