



February 8, 2006

**VIA OVERNIGHT PRIORITY DELIVERY**

Catherine McGuire, Esq.  
Chief Counsel  
Division of Market Regulation  
Securities and Exchange Commission  
Mail Stop 10-1  
450 5<sup>th</sup> Street, N.W.  
Washington, D.C. 20549

Re: *TriNet Group, Inc.*  
*(Provision of Professional Employment Services to Securities Broker-Dealers)*

Dear Ms. McGuire:

On behalf of TriNet Group, Inc., a Delaware Corporation (“TriNet”), a professional employer organization, we respectfully request that the Division of Market Regulation (the “Division”) confirm that it will not recommend to the Securities and Exchange Commission (the “Commission”) that the Commission take any enforcement action under Section 15(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) in circumstances where TriNet offers certain professional employer services as described below to securities broker-dealer firms that are registered with the Commission pursuant to the Exchange Act.

We believe that the Exchange Act and relevant staff no-action letters permit TriNet to provide Professional Employer Organization services—sometimes called employee leasing services—to broker-dealers without TriNet registering as a broker-dealer under section 15 of the Exchange Act. Such precedent includes *Staff Management, Inc.*, SEC No-Action Letter, Fed. Sec. L. Rep. (CCH) 2000 SEC No-Act Lexis 608,77,851 at 76,893 (April 27, 2000), and *EPIX Holdings Corporation*, SEC No-Action Letter, 2001 SEC No-Act. LEXIS 466 (April 2, 2001). As was the case in the correspondence to your office from counsel for Staff Management, Inc. and EPIX Holdings Corporation, TriNet does not furnish temporary staffing services or facilities management. TriNet also does not have a core of employees that it sends to various companies, as do firms that provide temporary help or contract staffing. We believe that, as a professional employer organization only, TriNet is not a broker-dealer or an associated person of a broker-dealer.



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*Factual Background*

TriNet offers certain administrative employer services to the existing worksite employees of its customers (referred to herein as “clients”). TriNet places its clients’ employees onto TriNet’s payroll, providing them with TriNet’s benefits and furnishing the client and the employees with human resource functions. These functions include human resource consulting services pertaining to advice regarding compliance with applicable employment laws, the provision of benefit services (e.g., health, dental, life, and accidental death and disability insurance policies), the provision of workers compensation benefits (including risk management services), the provision of unemployment compensation benefits, and the provision of payroll processing services. The insurance products to be provided by TriNet are traditional insurance products and would not be “securities” as defined under the federal securities laws.<sup>1</sup>

TriNet does not manage the business of its clients. The employees placed on TriNet’s payroll are at all times subject to the client’s supervision. TriNet has no control over the worksite at which, or from which, clients’ employees perform their services. The client retains the right and the obligation to direct its worksite employees as is necessary for the operation of such client’s business, including the discharge of any fiduciary duty or compliance with any applicable registration, licensing, regulatory or statutory requirements. Accordingly, the client remains subject to oversight and discipline by the Commission, other relevant governmental regulatory authorities and applicable self-regulatory organizations (each, and collectively, referred to as “SROs”) for any inappropriate actions engaged in by the client or the client’s employees at its worksite. In sum, while the employees placed on TriNet’s payroll are employees of TriNet for purposes of applicable employment laws, they are employees of the clients for purposes of the securities laws, rules and regulations in all respects.

The agreement between TriNet and any broker-dealers who choose to do business with TriNet, will provide, among other things, the following:

- a. TriNet’s broker-dealer clients will be obligated to comply with all applicable federal, state, and local regulations and registration and licensing requirements;
- b. TriNet’s broker-dealer clients will have sole and exclusive direction and control over the day-to-day professional activities of all of their employees;
- c. TriNet’s broker-dealer clients will be responsible for recruitment, proper registration, licensing, training and supervision of all of their employees with respect to broker-dealer obligations under all applicable securities laws, rules and regulations;
- d. TriNet’s broker-dealer clients will retain the right to discipline and terminate all of their employees;

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<sup>1</sup> TriNet’s service is typically referred to as a “professional employer organization” or “PEO” service, and has also been referred to as employee leasing or staff leasing services.



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- e. All books and records in the possession of TriNet relating to the services provided to a broker-dealer client will be made available for inspection by the Commission, and SROs or any other regulatory authority with jurisdiction over the broker-dealer and the broker-dealer/customer relationship;
- f. Broker-dealer clients will not assert that the existence of a professional employer arrangement with TriNet in any way affects the ability of the Commission, and SRO, or any other relevant regulatory authority to regulate or discipline any broker-dealer client or employee of such broker-dealer client;
- g. All employees of a broker-dealer client who are, or are required to be, registered or licensed by the Commission, any SRO or any other regulatory authority with jurisdiction over the broker-dealer's business will be deemed to be employees of the broker-dealer client for such registration, licensing, or regulatory purposes; and
- h. TriNet will not engage in any securities-related activities that would require registration as a broker-dealer such as brokerage services.

Control of the day-to-day operations and professional activities of the broker-dealer will remain with the broker-dealer. In this regard, the broker-dealer will continue to maintain and handle all books and records that the Commission, any applicable SRO, or any other relevant regulatory authority may require of a broker-dealer, and will continue to make such books and records available for inspection by the Commission, any other relevant regulatory authority and any SRO of which the broker-dealer is a member.

Similarly, the broker-dealer will continue to maintain and handle all funds and securities of the broker-dealer's customers. TriNet will receive payment from the broker-dealer for TriNet's administrative fee (inclusive of its profit margin), and for the cost of the payroll compensation that TriNet will then pay to broker-dealer personnel who have been placed on TriNet's payroll, and the cost of benefits funded by the broker-dealer. TriNet's administrative fee charges will not be based upon brokerage commissions earned by either the employees of the broker-dealer or the broker-dealer itself.<sup>2</sup> The TriNet fee is not a percentage, but is instead a flat, pre-determined fee based on the number of employees serviced at the client location by TriNet.

TriNet will have no discretion concerning the amount or frequency of the salary, wage, commission or bonus payments to employees of the broker-dealer who have been placed on TriNet's payroll, except that TriNet shall require that all compensation is paid in a timely manner as required by law.<sup>3</sup> The broker-dealer will be responsible for informing TriNet of the payments

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<sup>2</sup> TriNet's situation differs from the one where a registered representative proposes to establish a corporation or other entity that, among other things, is to receive the representative's commission from the broker-dealer. Such an entity would be considered an "Employee Owned Corporation."

<sup>3</sup> For example, some states require, as do certain USDOL regulations, that certain types of pay must be paid on a certain frequency, *e.g.*, no less frequently than monthly. Some states specify by what day of the month that



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that are to be made to such personnel. Such books and records relating thereto will be deemed property of the broker-dealer and will be available for inspection by the Commission and any SRO of which the broker-dealer is a member.

In addition, the broker-dealer will retain the traditional rights of an employer, including the right to hire, set compensation for, terminate, discipline, and reassign personnel of the broker-dealer who have been placed on TriNet's payroll. The broker-dealer will retain the responsibility for supervision and control with regard to the employees' performance of their securities duties, and the same individuals will continue in their capacity as registered representatives of the broker-dealer after the contract between TriNet and the broker-dealer client is executed. Similarly, the broker-dealer will be responsible for registration and training of the employees with regard to any regulated function. Each employee of the broker-dealer will continue to be held out to the public as the broker-dealer's registered representative and agent in effecting securities transactions. The broker-dealer will be liable for the acts or omissions of each employee after the agreement with TriNet is entered into, to the same extent that it had been liable prior to execution of such agreement. In this regard, each employee of the broker-dealer, as well as the broker-dealer, will be subject to the same administrative jurisdiction of the Commission and of other relevant regulatory authorities and SRO's both before as well as after entering into such agreement.

In any promotional material that TriNet distributes, TriNet will not in any way distribute promotional advertisements related to brokerage activities. In any promotional activities, TriNet will mention that it offers professional employer services, but will in no way mention that it is in any way engaged in any brokerage services. In addition, TriNet will not identify or endorse any broker-dealer in its promotional materials.

A PEO such as TriNet possesses neither the expertise nor the desire to manage its clients' businesses. Thus, TriNet will not presume to tell a brokerage firm how to transact its business or attempt to exercise any influence or control with respect to the broker-dealer's conduct of its business.

### *Analysis*

Section 3(a)(4) of the Exchange Act defines the term "broker," in relevant part, as "any person engaged in the business of effecting transactions in securities for the account of others." Section 3(a)(5) of the Exchange Act defines the term "dealer," in relevant part, as "any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise."

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monthly payroll must be delivered to employees. TriNet ensures that these minimum payroll frequency requirements are met, just as it helps to ensure that minimum wage and maximum hour requirements, if applicable, are met.



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Based upon the facts set forth above, we believe that TriNet does not become a broker-dealer by entering into a contract with a broker-dealer to provide the professional employer services described herein. As noted above, the staff has adopted this position in a number of recent no-action letters.

Consistent with the foregoing, we respectfully request that the Division advise TriNet that it will not recommend to the Commission that it take any enforcement action under Section 15(a) of the Exchange Act if TriNet carries out the Professional Employer Organization activities described above without registering with the Commission as a broker-dealer.

If you believe that the Staff of the Division cannot issue a letter in accordance with this request based upon the facts specified above, we respectfully request that you contact the undersigned at 510.875.7138 or, in my absence, our Associate General Counsel Jay Pimentel at 510.875.7546, so that we may discuss your concerns.

Please stamp one of the enclosed eight (8) copies of this letter, to acknowledge receipt of this submission, and return the same in the self-addressed stamped envelope provided for that purpose. Thank you for your consideration of this matter.

Very truly yours,

TriNet Group, Inc.

A handwritten signature in black ink, appearing to read "Gregory L. Hammond". The signature is fluid and cursive.

Gregory L. Hammond  
Executive Vice President & General Counsel