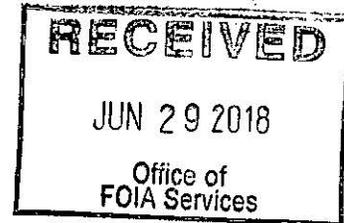


June 28, 2018

U.S. Securities and Exchange Commission
Office of FOIA/PA Operations
100 F. Street, N.E.
Washington, DC 20549-2736



Re: Freedom of Information Act Request

Dear U.S. Securities and Exchange Commission:

This is a request under the Freedom of Information Act. I request that a copy of the following document be provided to me:

Subject/Company Name: Internet Capital Corporation

Date Publically Available: January 13, 1998

Type of Document: No Action Letter

I am willing to pay fees for the search and reproduction cost for paper or electronic document production.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew V. Jablon".

Andrew V. Jablon
Resch Polster & Berger LLP
1840 Century Park East, 17th FL
Los Angeles, CA 90067
Direct Dial: 310-788-7524
E-mail: ajablon@rpblaw.com

AVJ:ml



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 17, 2018

Mr. Andrew V. Jablon
Resch Polster & Berger LLP
1840 Century Park East 17th FL
Los Angeles, CA 90067

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 18-02658-FOIA

Dear Mr. Jablon:

This letter is in response to your request, dated and received in this office on June 29, 2018, seeking access to a no-action letter related to Internet Capital Corporation dated January 13, 1998.

The search for responsive records has resulted in the retrieval of 17 pages of records that may be responsive to your request. They are being provided to you with this letter.

If you have any questions, please contact me at rollinsc@sec.gov or (202) 551-8329. You may also contact me at foiapa@sec.gov or (202) 551-7900. You also have the right to seek assistance from Aaron Taylor as a FOIA Public Liaison or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or Archives.gov or via e-mail at ogis@nara.gov.

Sincerely,

A handwritten signature in black ink that reads "Carl Rollins".

Carl Rollins
FOIA Research Specialist

Enclosures

ACT: 1AA
SECTION 203(a), 202(a)(1)
RULE _____
PUBLIC _____
AVAILABILITY 1/13/98

000025

January 13, 1998
Our Ref. No. 97-609-CC

RESPONSE OF THE OFFICE OF CHIEF COUNSEL Internet Capital
DIVISION OF INVESTMENT MANAGEMENT Corporation

In your letter of December 5, 1997, you request that we concur with your view that Internet Capital Corporation ("ICC") may establish and operate a passive bulletin board on an internet web site under the circumstances set forth in your letter without registering as an investment adviser under Section 203(a) of the Investment Advisers Act of 1940 ("Advisers Act").

Facts

ICC proposes to establish an internet web site to provide information to prospective buyers and sellers ("Participants") of the common stock of companies that are listed on a national securities exchange or on The Nasdaq Stock Market, Inc. ("Nasdaq") and subject to the periodic reporting requirements of the Securities Exchange Act of 1934. Although any company that meets these objective criteria is eligible to be included on the web site (if it pays the required fees to ICC),² ICC anticipates that the companies that choose to be included on the web site ("Companies") will have small capitalizations and lightly traded common stock for which there is no liquid market.

The web site will provide Participants with a directory of Companies included on the web site, access to each Company's public filings with the Commission, a brief summary of factual information about each Company from its Form 10-K, price quotes from the relevant stock exchange or Nasdaq for the stock of any Company, and a periodic newsletter. The web site also will include a bulletin board designed to allow Participants to communicate their interest in buying or selling the stock of a Company.³

The bulletin board will include the following information: (1) the name, address and telephone number (or other means of contact, such as electronic mail address) of each Participant interested in buying or selling the stock of a Company; (2)

¹ The Divisions of Market Regulation and Corporation Finance have responded to you by letter dated December 22, 1997, regarding the issues that you raised under Sections 5, 6, and 15 of the Securities Exchange Act of 1934 and Section 5 of the Securities Act of 1933, respectively.

² Telephone conversation between Stephen P. Reid, counsel to ICC, and Wendy Finck Friedlander on December 22, 1997.

³ Your request for relief under the Advisers Act relates solely to the operation of the bulletin board and does not encompass the other aspects of ICC's proposed web site, including the periodic newsletter.

Public Reference Copy

whether the Participant is a prospective buyer or seller; (3) the number of shares sought to be traded; (4) the proposed purchase or sale price; and (5) the date on which the information will be removed from the bulletin board. Participants will post this information directly onto the bulletin board. The information will remain on the bulletin board until the Participant either indicates that a transaction has been completed or requests that the information be deleted. ICC may limit how long the information will be posted.

No transactions will be effected on the bulletin board and ICC will have no role in effecting trades between Participants. All trades will be effected by direct contact between Participants. Neither ICC nor any affiliate of ICC will give advice regarding the merits or shortcomings of any particular trade. Although ICC will have no transaction records, it will retain records of the quotations listed for not less than three years and make the records available, upon reasonable request, to the Commission staff and to any stock exchange or regulated market on which the common stock is listed.

ICC will charge each Company a one-time flat fee for setting up, and a monthly fee for maintaining, the Company's information on the web site. Neither ICC nor any of its affiliates will receive any compensation in connection with the purchase or sale of any stock listed on the bulletin board. Participants who obtain access to the web site will be required to register on their initial visit to the web site, and to provide their password on each subsequent visit. Initially, Participants will not be charged a fee to obtain access to the web site, but ICC may, in the future, charge Participants a nominal one-time fee on their initial registration.

Analysis

Section 202(a)(11) of the Advisers Act defines an "investment adviser," in relevant part, as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. Section 203(a) of the Advisers Act generally requires investment advisers to register with the Commission, subject to certain exceptions.

You state that, in operating the bulletin board, ICC will not be engaging in any of the activities requiring registration as an investment adviser under Section 203(a) of the Advisers Act. The bulletin board will be merely a passive medium for Participants to obtain information about other Participants interested in buying or selling common stock of the Companies. Neither ICC nor the bulletin board will advise Participants about

the value of securities or the advisability of investing in, purchasing, or selling a Company's common stock.

In a 1996 letter to Angel Capital Electronic Network,⁴ the staff considered whether non-profit institutions that operated an electronic listing service (similar to the bulletin board proposed here) to facilitate the trading of the securities of unaffiliated companies were required to register as investment advisers. In concluding that these institutions did not need to register, the staff relied particularly on representations that the institutions: (1) would not be involved in any purchase or sale negotiations arising from the listing service; and (2) would not give advice regarding the merits or shortcomings of any particular trade.

We concur with your view that ICC may establish and operate the proposed bulletin board without registering as an investment adviser. To be an investment adviser under Section 202(a)(11), a person must receive compensation and provide investment advice.⁵ ICC will not be an investment adviser because, in operating the bulletin board, ICC will not provide investment advice. Our position is based particularly on your representation that neither ICC nor any of its affiliates will give advice regarding the merits or shortcomings of any particular trade. While our position also is based on your representation that ICC will play no role in effecting trades between Participants, we note that a bulletin board sponsor may facilitate trades between Participants without necessarily being deemed to be an investment adviser, provided that the sponsor's involvement does not constitute giving investment advice.⁶

The staff previously has stated that it will no longer respond to letters regarding the status under the Advisers Act of companies that establish and operate electronic bulletin boards to facilitate the trading of their own securities unless they present a novel or unique issue. Having now stated our views

⁴ Angel Capital Electronic Network (pub. avail. Oct. 25, 1996).

⁵ Under Section 202(a)(11), a person who does not give advice about securities may still be an investment adviser if the person issues analyses or reports concerning securities. We believe that the sponsorship of a passive bulletin board of the type described in this letter does not constitute the issuance of analyses or reports concerning securities.

⁶ We express no view as to whether facilitating trades between Participants may raise other issues under the federal securities laws, including whether the bulletin board sponsor would be acting as a "broker," or whether the bulletin board would be an "exchange," under the Securities Exchange Act of 1934.

⁷ See PerfectData Corporation (pub. avail. Aug. 5, 1996) (issuer that sponsors bulletin board to facilitate trading of its securities and does not provide investment advice regarding trades is not an investment adviser).

with respect to the status under the Advisers Act of companies that establish and operate electronic bulletin boards to facilitate the trading of the securities of unaffiliated companies, the staff will no longer respond to letters in this area unless they present a novel or unique issue.

Wendy Finck Friedlander

Wendy Finck Friedlander
Senior Counsel

090022 17

REID & CO.
A PROFESSIONAL LAW CORPORATION
533 LORING AVENUE
LOS ANGELES, CALIFORNIA 90024-2523
PHONE (310) 470-0999 FACSIMILE (310) 470-2288
E-MAIL REIDCO@EARTHLINK.NET

December 5, 1997

Ms. Catherine McGuire
Associate Director/Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW, Mail Stop 5-10
Washington, D.C. 20549

Ms. Catherine Dixon
Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, NW, Mail Stop 3-3
Washington, D.C. 20549

Mr. Douglas Scheidt
Associate Director/ Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, NW, Mail Stop 10-6
Washington, D.C. 20549

Re: Internet Capital Corporation
Securities Exchange Act of 1934 (Sections 5, 6 and 15)
Investment Advisors Act of 1940 (Section 203(a))
Securities Act of 1933 (Section 5)

Dear Ms. McGuire & Dixon & Mr. Scheidt

We are counsel to Internet Capital Corporation, a privately-owned Nevada corporation ("ICC"), which is interested in establishing a passive "bulletin board" described below (the "Bulletin Board") on the World Wide Web ("Web") to provide information to prospective sellers and buyers ("Participants") of common stock ("Common Stock") of corporations ("Corporations") participating in the Bulletin Board. We hereby request that the staff ("Staff") of the Securities and Exchange Commission (the "Commission") concur with our view that ICC may establish the Bulletin Board without registration (1) as a "broker" or "dealer" under Section 15(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"); (2) as an "investment adviser" under Section 203(a) of the Investment Advisors Act of 1940, as amended (the "Advisors Act"); (3) of the Bulletin Board as a "national securities exchange" under Section 6 of the Exchange Act; or (4) of offers and sales made through the Bulletin Board under the Securities Act of 1933, as amended (the "Securities Act").

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Ms. McGuire & Dixon & Mr. & Scheidt
December 5, 1997
Page 4

settlement of any securities transactions other than to refer Participants to a "bank" as defined in Section 3(a)(6) of the Exchange Act.

The screens and hard copy by which the data of the Bulletin Board will be provided to Participants will include the following notifications, disclaimers and information:

- Markets Listing the Common Stock. Identification of the national securities exchange or other regulated securities market that lists each Corporation's Common Stock;
- The Bulletin Board is Not an Exchange, Etc. Neither ICC nor the Bulletin Board is a registered national securities exchange, securities information processor, broker, dealer or investment adviser;
- Transfer Agent for the Common Stock. The name, address and telephone number of the transfer agent for each Corporation's Common Stock;
- Identification of Broker-Dealers. Any person that is a broker-dealer, an associated person of a broker-dealer or who has a state securities license is responsible for identifying that fact;
- Two-Sided Quotes Prohibited. "Two-sided quotes," in which a person indicates a bid to buy at one price and an offer to sell at a higher price, are prohibited;
- Postings Informational Only. The postings on the Bulletin Board are informational only. They are not in any way to be deemed or construed to be offers or firm quotes by ICC or any of the parties involved, rather they are merely a list of the names, addresses and telephone numbers of potentially interested sellers and buyers, the number of shares of Common Stock which may be involved in a trade and the proposed price at which a trade could occur. ICC does not make any representation or warranty regarding any information posted on the Bulletin Board or assure that any trade will occur as to any number of shares or at any price. Any and all trades between Participants must be executed by the Participants independent of ICC or any of its affiliates;
- Application of Securities Laws. Federal and applicable state securities laws (including the anti-fraud and anti-manipulation provisions) apply to any offer made or transaction consummated using the Bulletin Board;

Ms. McGuire & Dixon & Mr. & Scheidt
December 5, 1997
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- Federal Registration Requirements. The registration requirements of the federal securities laws apply to all offers and sales through the Bulletin Board, absent an available exemption. Each participant is responsible for ascertaining the availability of its own federal securities law exemption. Offers and sales of control or restricted securities may be made in reliance upon the exemption contained in Section 4(1) of the Securities Act if the requirements of Rule 144, including the "manner of sale" requirements, are satisfied. Please note that the public information, volume, manner of sale and notification requirements of Rule 144 do not apply to transactions that satisfy the requirements of Rule 144(k).
- State Securities Laws. Any offer made or transaction consummated using the Bulletin Board is subject to compliance with applicable state securities laws. Offers may be made or accepted only to the extent lawful in the states involved. Each participant is responsible for ascertaining the availability of its own state securities law exemption.

ICC may make announcements relating to, and advertise or otherwise publicize, the existence and availability of the Bulletin Board and provide information about the use and benefits of the Bulletin Board. In its communications with the public, ICC will not characterize itself or the Bulletin Board as being a "broker," a "dealer," or an "exchange." All information provided by ICC on the Site, including the Bulletin Board, the Corporate Records Page and the Corporate Information Page, will be consistent with the anti-fraud and anti-manipulation requirements of the federal securities laws.

We respectfully request that the Staff concur with our view that ICC may establish and operate the Bulletin Board as described herein without any of the following:

- (1) ICC registering as an "investment adviser" under Section 203(a) of the Advisers Act;
- (2) ICC, or any of its personnel who will manage and operate the Bulletin Board, registering as a "broker" and/or "dealer" under Section 15(a) of the Exchange Act;
- (3) The registration of the Bulletin Board as a "national securities exchange" under Section 6 of the Exchange Act; or
- (4) The registration of offers and sales made through the Bulletin Board under the Securities Act.

Ms. McGuire & Dixon & Mr. & Scheidt
December 5, 1997
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II. REGISTRATION ISSUES

Broker and Dealer

Subject to certain exceptions, Section 15(a) of the Exchange Act requires registration of any broker or dealer. Section 3(a)(5) of the Exchange Act defines a "dealer" as "any person engaged in the business of buying and selling securities for his own account. Section 3(a)(4) defines a "broker" as any person engaged in the business of effecting transactions in securities for the account of others" ICC will not be engaging in any activities requiring it to register as a broker or dealer under Section 15(a). This conclusion is consistent with the Staff's determination regarding a bulletin board similar to the Bulletin Board in *Farmland Industries, Inc.* (August 26, 1991).

Requiring ICC to register as a broker-dealer would not provide the Participants with any additional protection. Because ICC will not handle or hold funds or securities of any Participant, a minimum capital requirement is unnecessary. Any financial failure of ICC would result only in the loss of the Participants' access to the Bulletin Board, and not a loss of their funds. Furthermore, the costs of compliance with the record keeping and periodic reporting requirements would far outweigh any benefits.

National Securities Exchange

Section 5 of the Exchange Act provides that it is unlawful for an exchange to effect any transaction in a security unless such exchange is registered as a national securities exchange under Section 6 of the Exchange Act or is exempted from such a registration upon application to the Commission. Section 3(a)(1) of the Exchange Act defines an "exchange" as:

any organization, association or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

Based on the law and the foregoing facts, we are of the opinion that the Bulletin Board would not be an "exchange" within the meaning of the Exchange Act. In addition, the Bulletin Board will be restricted only to Corporations whose Common Stock is registered under Section 12 of the Exchange Act or who are filing with the Commission in accordance with Section 15(d) of the Exchange Act such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 of the Exchange Act in respect of a security registered pursuant to

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Ms. McGuire & Dixon & Mr. & Scheidt
December 5, 1997
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Section 12 of the Exchange Act. Consequently, there are no issues raised regarding the necessity of providing information to Participants.

Investment Adviser

Subject to certain exceptions, Section 203(a) of the Advisers Act requires the registration of an investment adviser. Section 202(a)(11) of the Advisers Act defines an "investment adviser" as:

any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of regular business issues or promulgates analyses or reports concerning securities ...

As indicated above, neither ICC nor the Bulletin Board will provide information regarding the advisability of buying or selling Common Stock or any other securities. The Bulletin Board will merely provide a passive medium for Participants to obtain information regarding other Participants who are interested in buying or selling Common Stock. Thus, ICC will not be engaging in any activities requiring registration as an investment adviser under the Advisers Act. This conclusion is consistent with the Staff's determination regarding a bulletin board similar to the Bulletin Board in *Farmland Industries, Inc.*, supra.

Registration under the Securities Act

Section 5 of the Securities Act makes it unlawful for any person to offer, sell or solicit an offer to purchase any security unless a registration statement has been filed with respect to the security, absent an available exemption. In view of the manner in which the Bulletin Board will be established and operated, ICC believes that the operation of the Bulletin Board does not constitute an offer to sell or the solicitation of an offer to buy Common Stock on the part of ICC. As such, ICC's activities in connection with the establishment and maintenance of the Bulletin Board would not require Securities Act registration of offers or sales made through the Bulletin Board.

III. CONCLUSION

For the foregoing reasons, we request that the Staff concur with our view that ICC may establish and operate the Bulletin Board without (1) ICC registering as an "investment adviser" under Section 203(a) of the Advisers Act; (2) ICC, or any of its personnel who will manage and operate the Bulletin Board, registering as a "broker" and/or "dealer" under Section 15(a) of the Exchange Act; (3) the registration of the Bulletin Board as a "national securities exchange" under

Mr. McGuire & Dixon & Mr. & Scheidt
December 5, 1997
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Section 6 of the Exchange Act; or (4) registering offers and sales made through the Bulletin Board under the Securities Act.

In the event that the Staff does not concur with any of our views, we kindly request an opportunity to discuss the matter prior to any final decision thereon.

If you have any questions or comments in connection with the above matter, please do not hesitate to contact me.

Very truly yours.



STEPHEN P. REID

SPR/gag

cc: Mr. Jack Drogin
Ms. Mary Kosterlitz
Ms. Windy Freeland

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

(000030)

December 22, 1997

Stephen P. Reid, Esq.
Reid & Co.
533 Loring Avenue
Los Angeles, CA 90024-2523

Re: Internet Capital Corporation

Dear Mr. Reid:

In your letter dated December 5, 1997, you request relief on behalf of your client, Internet Capital Corporation ("ICC"), a Nevada corporation, from the broker-dealer and national securities exchange registration requirements found in Sections 5, 6, and 15 of the Securities Exchange Act of 1934 ("Exchange Act"). You also request relief from the requirement to register as an investment adviser under Section 203(a) of the Investment Advisers Act of 1940 ("Advisers Act") and the requirement to register offers and sales made through ICC's bulletin board under Section 5 of the Securities Act of 1933 ("Securities Act").

You represent in your letter that you intend to establish a passive bulletin board for corporations whose common stock is listed on a national securities exchange or on The Nasdaq Stock Market, Inc. ("Nasdaq"). You state that although these issuers will be listed on one or more of those markets, they will have small capitalizations and trading in these issuers' common stock will be extremely light. Your World-Wide Web site will disclose for each issuer the name of the national securities exchange listing the stock or that the stock is quoted on Nasdaq.

Your World-Wide Web site will provide investors with access to each listed corporation's public filings with the Commission, including a hyperlink to the Commission's EDGAR database and a brief summary of factual information on each issuer, taken from periodic reports, such as Form 10-Q and Form 10-K, that the issuer has filed with the Commission. The World-Wide Web site will also provide price quotes for companies listed on the bulletin board from the national securities exchange on which they are listed or from Nasdaq if the company's common stock is quoted there. The World-Wide Web site will also contain a periodic newsletter from ICC. The ICC newsletter will only reprint publicly available articles on the Internet and the securities markets in general and will not contain articles on any of the listed corporations. Neither ICC nor any of the articles contained in the ICC newsletter will discuss, analyze, or recommend any security or any issuer or their investment quality or value. The newsletter will contain a boldface disclaimer that neither the newsletter nor any article it contains is intended to constitute investment advice, a

recommendation, or an endorsement to purchase any securities of a corporation being described. The newsletter also will state explicitly that ICC did not produce, and takes no responsibility for, the contents of any articles contained in the newsletter.

ICC will charge listed corporations a one-time flat fee for setting up that corporation's information on the World-Wide Web site and listing it on the bulletin board and a monthly fee for maintaining the company's information on the site. That monthly fee will not be related to the number or size of investor indications of interest placed on the bulletin board or on the number of investor "hits" to an issuer's information page. Neither ICC nor any of its affiliates will receive any transaction-based compensation in connection with the system. While ICC currently does not intend to charge investors for access to the system, it may in the future charge investors a one-time fee for initial access.

You state that the bulletin board, which will contain a separate page for each issuer, will provide investors with the following information: (1) the name, address, and telephone number (or other contact mechanism such as electronic mail address) of each interested buyer and seller; (2) the number of shares of stock to be involved in the proposed trade; (3) whether the investor is a prospective purchaser or seller of the securities; (4) the proposed trade price; and (5) the date on which the information will be removed from the bulletin board. The information will remain on the bulletin board until the investor indicates that a transaction has been completed or requests that the information be deleted, although ICC also may impose reasonable time limits on information posted to the bulletin board.

You state that no transactions will be effected by the system and ICC will have no direct role in effecting trades between investors. Instead, all trades will be effected solely by direct contact between the investors. Although ICC will have no transaction records, it will keep and maintain records of all indications of interest posted to the system for not less than three years and will make them available to the staff of the Commission and any organized market on which the securities are traded or quoted upon reasonable request. Each investor will be required to rely on his or her own exemption under the Securities Act, including, among others, Section 4(1) of the Securities Act.

You state that neither ICC nor any of its affiliates will (1) be involved in any purchase or sale negotiations arising from the bulletin board; (2) give advice regarding the merits or shortcomings of any particular trade; (3) use the bulletin board, directly or indirectly, to offer to buy or sell securities, except in compliance with the federal securities laws; (4) receive, transfer, or hold funds and securities as an incident of operating the bulletin board; or (5) directly, or indirectly, facilitate the clearance and settlement of securities transactions, other than to refer investors to a bank, as defined in section 3(a)(6) of the Exchange Act, to settle the purchase or sale of securities listed on the bulletin board.

You state that the bulletin-board will provide the name, address, and telephone number of the transfer agent for each issuer whose shares are listed on the bulletin board. In addition, the screens and hard copy by which the data of the bulletin board will be provided

to investors will include the following notifications, disclaimers, and information:

- (1) The bulletin board is not registered with the Commission as a national securities exchange, securities information processor, broker, dealer, or investment adviser;
- (2) Any person who is a broker-dealer, an associated person of a broker-dealer, or who has a state securities license is responsible for identifying that fact;
- (3) "Two-sided quotes," in which a person indicates a bid to buy and an offer to sell the same security, at the same time, are prohibited;
- (4) The postings on the bulletin board are informational only. The postings are not in any way to be deemed or construed to be offers or firm quotes by ICC or any of the parties involved; rather they are merely a list of the names, addresses, and telephone numbers, of potentially interested buyers and sellers, the number of shares of stock that may be involved in a trade, and the proposed price at which a trade could occur. ICC does not make any representation or warranty regarding any information posted on the bulletin board or assure that any trade will occur as to any number of shares or at any price. Any and all trades must be executed by investors independent of ICC or any of its affiliates;
- (5) Federal and applicable state securities laws (including the anti-fraud and anti-manipulation provisions) apply to any offer made or transaction consummated using the bulletin board;
- (6) The registration requirements of the federal securities laws apply to all offers and sales through the bulletin board, absent an available exemption. Each investor is responsible for ascertaining the availability of its own federal securities law exemption. Offers and sales of control or restricted securities may be made in reliance upon the exemption contained in Section 4(1) of the Securities Act if the requirements of Rule 144, including the "manner of sale" requirements, are satisfied. Please note that the public information, volume, manner of sale, and notification requirements of Rule 144 do not apply to transactions that satisfy the requirements of Rule 144(k).
- (7) Any offer made or transaction consummated using the bulletin board is subject to compliance with applicable state securities laws. Offers may be made or accepted only to the extent lawful in the states involved. Each investor is responsible for ascertaining the availability of its own state securities law exemption.

Response:

On the basis of the facts presented in your letter, but without necessarily agreeing with your analysis, the Division of Market Regulation will not recommend enforcement action to the Commission under Section 5, 6, or 15 of the Exchange Act if ICC engages in the activities described in your letter without registration as a national securities exchange under Section 6 or as a broker-dealer under Section 15 of the Exchange Act.

The Division of Corporation Finance has asked us to inform you that on the basis of the facts presented in your letter, but without necessarily agreeing with your analysis, that Division would not recommend enforcement action to the Commission under Section 5 of the Securities Act if ICC engages in the activities described in your letter concerning the establishment and maintenance of the bulletin board.

The Division of Investment Management has advised us that they will respond separately to your request.

This is a position of the Division of Market Regulation and the Division of Corporation Finance regarding enforcement action only, and does not express any legal conclusions regarding the applicability of Section 5 of the Securities Act or Sections 5, 6, or 15 of the Exchange Act. or any other statutory or regulatory provisions of the federal securities laws. This no-action position is subject to change in current law, regulation, and interpretation governing Internet-based bulletin boards. Any change may require the staff, and in particular the Division of Market Regulation, to reevaluate and revoke or modify this no-action position.

In reaching these positions, we note the following: (1) ICC will provide the described notifications, disclaimers, and information enumerated above; (2) each issuer listed on an ICC bulletin board will be a Section 12 registrant, listed on one or more national securities exchanges or on the Nasdaq, and ICC will remove from its World-Wide Web site the bulletin board of any issuer that ceases to be listed on any national securities exchange or the Nasdaq; (3) ICC will keep records of all indications of interest entered into the system and make those records available to the Commission and any regulated market on which the issuer's securities are listed upon reasonable request; (4) ICC's advertising will comply with the representations set forth in your letter; (5) neither ICC nor any affiliate of ICC will use the system, directly or indirectly, to offer to buy or sell securities, except in compliance with the federal securities laws, including any applicable registration requirements (absent an available exemption therefrom); and (6) neither ICC nor any affiliate of ICC will (i) receive any transaction related compensation for creating or maintaining the system, or for the use of the system; (ii) be involved in any purchase or sale negotiations arising from the system; (iii) provide information regarding the advisability of buying or selling common stock or any other securities; (iv) receive, transfer, or hold funds or securities as an incident of operating the system; or (v) refer any Participant to a third party to clear or settle the purchase or sale of common stock other than a bank as defined in Section 3(a)(6) of the Exchange Act.

Stephen P. Reid, Esq.
December 22, 1997
Page 5

000034

These positions are based on the representations made to the Divisions in your letter.
Any different facts or conditions might require the Divisions to reach a different conclusion.

Sincerely,



Catherine McGuire
Chief Counsel

Enclosure

CM/JD/dn