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September 16, 1987

PUBLIC AVAILABILITY DATE: 11-20-87

ACT	SECTION	RULE
1934	16(b)	16b-3

Section 16(b); Rule 16b-3

Supplement to Anitec Image Technology Corp.
Request for No Action Advice regarding
Incentive Stock Option Plan

Gentlemen:

This letter supplements and amends our prior letter submitted on behalf of Anitec Image Technology Corp., a Delaware corporation (the "Company"), dated July 27, 1987, in which we requested your concurrence with certain interpretations expressed therein of Rule 16b-3 promulgated under the Securities and Exchange Act of 1934 (the "1934 Act") as they relate to proposed amendments to the Company's Incentive Stock Option Plan (the "Plan").

Based on your advice, we have revised the proposed amendments to the Company's Plan to require that an option holder's election to deliver already-owned stock, or to have the Company withhold shares, upon exercise of a non-qualified option to satisfy the related tax obligation must be made either during the ten-day "window period" set forth in Rule 16b-3 (e)(3)(iii) or at least six months prior to the date that the option exercise becomes taxable. A copy of the proposed amendments to the Company's Plan, as revised, is attached hereto as Exhibit A.

Our request for your concurrence in the analysis and conclusion expressed in our July 27 letter relating to non-"window period" elections to use the tax withholding feature is hereby withdrawn.

We are still respectfully requesting that the staff concur in our conclusions expressed in the July 27 letter as they relate to the proposed amendments to the Plan, as revised and set forth on Exhibit A attached hereto, that (1) the election by an optionee under the Plan to have a portion of the shares of common stock of the Company otherwise issuable to the optionee withheld to satisfy federal, state, and local tax withholding requirements will be exempt from the operation of Section 16(b) of the 1934 Act by reason of Rule 16b-3; (2) the election by an optionee under the Plan to deliver shares of common stock of the Company, other than those received upon the related exercise, to satisfy federal, state, and local tax withholding requirements will similarly be exempt; and (3) these elections will qualify for exemption by reason of Rule 16b-3 even if the proposed amendments as revised by this letter are not submitted to the Company's shareholders for approval.

Should you have any questions or comments about this supplemental letter, please call the undersigned, or, in his absence, Stephen A. Magida at (212) 207-1835.

Sincerely,

Paul I. Rachlin

The Securities and Exchange Commission,
Office of Chief Counsel,
Division of Corporate Finance,
450 Fifth Street, N.W.,
Washington, D.C. 20549.

Attention: Mike Prozan, Esq.

FEDERAL EXPRESS

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July 27, 1987

Section 16(b); Rule 16b-3

Anitec Image Technology Corp.
Request for No Action Advice Regarding
Incentive Stock Option Plan

Gentlemen:

On behalf of Anitec Image Technology Corp., a Delaware corporation (the "Company"), we are writing to request your concurrence with the interpretations of Rule 16b-3 promulgated under the Securities Exchange Act of 1934 (the "1934 Act") expressed in this letter as they relate to proposed amendments to the Company's Incentive Stock Option Plan.

THE COMPANY

The Company designs, manufactures and markets photographic films, papers and processing chemicals for the graphic arts industry. The Company's common stock is registered under Section 12(g) of the 1934 Act and is quoted on NASDAQ. The Company has timely filed all reports and statements required to be filed under the 1934 Act.

THE PLAN

In April 1985, the Company's Board of Directors adopted the Incentive Stock Option Plan (the "Plan"). The Company's stockholders approved the adoption of the Plan

shortly thereafter. The Plan provides for the grant of incentive stock options and non-qualified stock options to key employees of the Company and its subsidiaries. The purpose of the Plan is to establish a close identity of interests between the Company and its subsidiaries and their respective employees, and to assist the Company in retaining these employees and attracting new executives and other key employees.

For your reference, a copy of the Plan is attached as Exhibit A to this letter. We would like to draw your attention to Section 19 of the Plan which enables an option holder to deliver shares of the Company's common stock to satisfy, in whole or in part, the exercise price of any option granted under the Plan. For purposes of this letter, you may assume that the Plan in its present form complies with the applicable provisions of Rule 16b-3.

THE PROPOSED AMENDMENTS

Anitec is proposing to amend the Plan to allow option holders to satisfy tax withholding obligations in connection with the exercise of a non-qualified stock option by having the Company withhold a number of shares deliverable on exercise or by tendering to the Company a number of already-owned shares which have a value equal to the withholding amount. A copy of the proposed amendments is attached as Exhibit B to this letter.

Unlike prior similar plan amendments considered by the Staff (see discussion below), the Plan, as amended, will not require that an option holder's election to deliver already-owned stock, or to have the Company withhold shares, upon exercise of a non-qualified option to satisfy the related tax obligation must be made either during the ten-day "window period" set forth in Rule 16b-3(e)(3)(iii) or at least six months prior to the date that the option exercise becomes taxable. However, the exercise of a non-qualified stock option within six months of its date of grant will be prohibited.

The Compensation Committee of the Board of Directors, which administers the Plan and all of whose members are "disinterested persons" within the meaning of Rule 16b-3(b)(3), will reserve the absolute right to disapprove any election to deliver already-owned stock, or to withhold stock, to satisfy the optionee's tax obligation.

DISCUSSION

1. Share Withholding Election

Under the Plan as proposed to be amended, a participant will have the discretion to elect to satisfy tax withholding obligations by using shares of common stock already owned or issuable on an option exercise. We realize that an argument might be made that this discretion is equivalent to the right to receive, to a certain extent, either stock or a cash equivalent (taxes paid) on exercise of an option and that using stock to satisfy tax withholding obligations arguably resembles a cash settlement of a stock appreciation right, which in turn must comply with Rule 16b-3(e). However, we believe that the proposed amendments are more like the surrender of stock as payment for an option exercise, herein referred to as a stock-for-stock option exercise, than a cash settlement of an SAR, and should therefore be analyzed in that context. Nevertheless, the proposed amendments to the Plan will satisfy most of the requirements of Rule 16b-3(e).

The staff has previously taken the position that, so long as certain of the requirements of Rule 16b-3(e) are met, that Rule exempts from the operation of Section 16(b) of the 1934 Act the election by a Plan participant to have a portion of the shares otherwise issuable to that participant withheld to satisfy tax withholding requirements. Primark Corporation, (February 23, 1987); Baxter Travenol Laboratories, Inc., (February 10, 1986). In the letters cited, the staff relied upon Rule 16b-3(e), which exempts certain cash settlements of SARs.

With respect to SARs, however, Rule 16b-3(e) requires that the election to receive a cash payment upon exercise of the SAR and the actual exercise of the SAR, occur during a ten-day "window" period as defined in Rule 16b-3(e)(3)(iii). The proposed amendments to the Plan allow option holders to elect to use stock to pay tax withholding obligations outside any window period and without a six-month prior election. The staff has expressed the view in prior interpretative letters that, so long as the election to deliver already-owned stock or to have shares of stock withheld to pay the participant's tax liability is made within either of the aforementioned time periods, the actual exercise of the option need not occur during a window period. Baxter Travenol Laboratories, Inc. (February 10, 1986); Eli Lilly & Co. (July 23, 1986).

We submit that such timing restrictions on the use of stock to satisfy tax withholding obligations are inconsistent with the need for flexibility in the area of tax withholding and are unnecessary to further the underlying purposes of Rule 16b-3. The timing restrictions on the use of the stock withholding feature derive from its analogy to SARs. In certain respects, however, the use of stock to satisfy tax withholding obligations bears a closer resemblance to a stock-for-stock option exercise. Notably, Rule 16b-3 does not require a prior election by option holders for stock-for-stock option exercises.

Under Rule 16b-3 the "surrender or delivery to the issuer of its stock as payment upon the exercise of a stock option" is not considered a "sale" of stock. From the perspective of the employee option holder, the payment required upon exercising an option is the sum of the option price and the tax required to be withheld on exercise. We believe that the word "payment" in Rule 16b-3's stock-for-stock exercise exemption should encompass the tax withholding obligations which arise on exercise of the option. In Primark, see above, for example, the Staff concluded that the use of already-owned stock to satisfy tax withholding obligations was not a "sale" of stock under Section 16(b). The Staff's conclusion is entirely consistent with the proposition that the delivery of stock to satisfy tax withholding obligations is analogous to the surrender of stock in payment of the option price, which under Rule 16b-3 is not a "sale" of stock.

Since Rule 16b-3 does not require option holders to make an election to use stock as payment of the option price during a window period or at least six months prior to exercise, the Rule should not be construed to impose such restrictions on an election to use stock to pay the tax withholding obligation. Furthermore, we believe that the elimination of such timing restrictions, consistent with the treatment of stock-for-stock option exercises, creates no significant opportunity for speculative abuse, and is consistent with the need for flexibility in the area of tax withholding.

Although we believe that the use of stock to satisfy tax withholding obligations in connection with option exercises should not be rigidly cast by analogy as a cash settlement of an SAR, the Plan, as amended, will comply with most of the requirements of Rule 16-b(3)(e). As noted above, the Company's common stock is registered under Section 12(g) of the 1934 Act and the Company has been

subject to the reporting requirements of Section 13 of the 1934 Act for more than a year and has filed all reports and statements required to be filed pursuant to that Section. Accordingly, the requirements of subparagraph (1) of Rule 16b-3(e) are satisfied. The requirements of subparagraph (2) of Rule 16b-3(e) are satisfied because the exercise of a non-qualified stock option may not occur until at least six months after the date of grant of the option (except that the limitation may not apply in the event death or disability of the participant occurs prior to the expiration of the six-month period).

With respect to the requirements of Rule 16b-3(e)(3)(i), all members of the Compensation Committee, which administers the Plan, are "disinterested persons". That Committee will approve, in advance, the election to withhold shares, or to deliver already owned shares, to satisfy the optionee's tax obligation with respect to all outstanding and subsequently granted non-qualified stock options, subject to the Committee's right to disapprove any election and to revoke its advance approval. The Committee's action meets the requirements of Rule 16b-3(e)(3)(ii) because the Committee has both the power to consent to and disapprove any such election.

2. Shareholder Approval

Pursuant to paragraph (a)(2)(ii) of Rule 16b-3, for a plan to enjoy the exemptions provided by Rule 16b-3, any amendment to the plan must be approved by the shareholders of the Company if the amendment would:

(A) materially increase the benefits occurring to participants under the plan;

(B) materially increase the number of securities which may be issued under the plan; or

(C) materially modify the requirements as to eligibility for participation in the plan.

The proposed amendments do not increase the number of securities which may be issued under the Plan or modify the requirements as to eligibility for participation in the Plan. The Company also does not believe that such amendments materially increase the benefits occurring to participants under the Plan.

The purpose of the proposed amendments is to make it easier for participants to satisfy tax withholding requirements. The amendments will not result in any additional remuneration for officers not already contemplated under the Plan. In the absence of such amendments, the withholding taxes would have to be satisfied by requiring the participant to deliver cash to the Company, which could result in cash flow problems for a participant. The proposed amendments will simply allow a participant to elect to have a portion of the shares, which would otherwise be issued or transferred to the participant, retained by the Company, or allow the participant to elect to deliver already-owned shares to the Company, to satisfy the tax withholding obligation.

The proposed amendments are very similar to those described in the aforementioned letters to Primark Corporation and Baxter Travenol, as to which the Staff expressed the view that such amendments do not require shareholder approval under Rule 16b-3. Further, similar to the plans set forth in those letters, the Company's Stock Option Plan, as approved by its shareholders, contains a provision permitting the delivery of shares of common stock of the Company to satisfy, in part or in whole, the option exercise price. Since the shareholders of the Company have already approved a feature allowing shares to be delivered to satisfy the option exercise price, the addition of a similar provision as contemplated by the proposed amendments should not be viewed as a material increase in the benefits to participants and, accordingly, should not require shareholder approval.

CONCLUSION

On the basis of the foregoing, we respectfully request that the staff concur in our opinion that (1) the election by an optionee under the Plan to have a portion of the shares of common stock of the Company otherwise issuable to the optionee withheld to satisfy federal, state, and local tax withholding requirements will be exempt from the operation of Section 16(b) of the 1934 Act by reason of Rule 16b-3; (2) the election by an optionee under the Plan to deliver shares of common stock of the Company, other than those received upon the related exercise, to satisfy federal, state, and local tax withholding requirements will similarly be exempt; (3) neither of the above elections needs to be made during a "window" period or at least six months prior to the date the option exercise becomes

taxable; and (4) these elections will qualify for exemption by reason of Rule 16b-3 even if the proposed amendments are not submitted to the Company's shareholders for approval.

Should you require any additional information, or wish to discuss the matter further, please do not hesitate to contact the undersigned, or in his absence, Paul Rachlin at (212) 207-1845.

Very truly yours,

Stephen A. Magida

Stephen A. Magida

Securities and Exchange Commission,
Office of Chief Counsel,
Division of Corporate Finance,
450 Fifth Street, N.W.,
Washington, D.C. 20549.

Attention: William E. Toomey, Esq.

October 20, 1987

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: Anitec Image Technology Corp.
Incoming letters dated July 27 and September 16, 1987

On the basis of the facts presented, it is the view of this Division that a) the election by an optionee under the Plan to have a portion of the shares of common stock of the Company otherwise issuable to the optionee withheld to satisfy federal, state and local tax withholding requirements will be exempt from the operation of Section 16(b) of the Securities Exchange Act of 1934 by reason of Rule 16b-3; b) the election by an optionee under the Plan to deliver shares of common stock of the Company, other than those received upon the related exercise, to satisfy federal, state and local tax withholding requirements will be similarly exempt; and c) the proposed amendments providing for these elections need not be approved by shareholders pursuant to Rule 16b-3(a).

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

Sincerely,

William E. Toomey
Assistant Chief Counsel