

**HOGAN & HARTSON**

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February 15, 2002

**BY HAND DELIVERY**

Securities and Exchange Commission  
 450 Fifth Street, N.W.  
 Washington, D.C. 20549

Public Avail. Date: 2/25/02 0225200218  
 Act Section Rule  
 1933 3(b) 262

Re: PaeTec Corp.

Ladies and Gentlemen:

On behalf of PaeTec Corp., a Delaware corporation (the "Company"), we hereby request, pursuant to Rule 262 of Regulation A ("Regulation A") promulgated under the Securities Act of 1933, as amended (the "Securities Act"), a waiver of any disqualification of the Company's eligibility to rely on the exemption from the registration requirements of the Securities Act provided by Regulation A that may be applicable to the Company in connection with the proposed Regulation A offering described below as a result of the final judgment against Jeffrey P. Sudikoff, a stockholder of the Company, and the related pleas of such stockholder described below.

**I. Proposed Regulation A Offering**

The Company proposes to rely on the exemption from Securities Act registration provided by Regulation A to consummate an offer to some of its current and former employees to repurchase certain benefit plan options exercisable for shares of the Company's Class A common stock (the "Class A Common Stock") and certain shares of Class A Common Stock that were issued upon the exercise of such stock options (the "Regulation A Offering"). The Company will make the repurchase offer to comply with applicable securities laws and regulations.

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## II. Background

### Jeffrey P. Sudikoff's Relationship to the Company

*Security Ownership and Company Capital Structure.* Based on information furnished to the Company, Jeffrey P. Sudikoff is the beneficial owner of 2,895,500 shares, or approximately 11%, of the 26,173,581 shares of Class A Common Stock outstanding as of February 8, 2002. Mr. Sudikoff does not own any other securities of the Company.

In addition to the outstanding Class A Common Stock, there were 2,635,000 shares of the Company's Class B common stock (the "Class B Common Stock") and 134,000 shares of the Company's Series A cumulative convertible preferred stock (the "Series A Preferred Stock") outstanding as of February 8, 2002. Each share of Class B Common Stock is convertible at any time and from time to time into one share of Class A Common Stock. Without giving effect to accrued and unpaid dividends, the Series A Preferred Stock was convertible into 17,866,667 shares of Class A Common Stock as of February 8, 2002.

Except as described below, holders of the Class B Common Stock and Series A Preferred Stock are entitled to vote on all matters submitted to the stockholders for a vote together with the holders of the Class A Common Stock, with each share of Class A Common Stock entitled to one vote per share, each share of Series B Common Stock entitled to 20 votes per share and each share of Series A Preferred Stock entitled to one vote for each share of Class A Common Stock issuable upon conversion of the Series A Preferred Stock as of the record date for such vote. In addition, holders of the Class B Common Stock and the Series A Preferred Stock are entitled to vote separately as a class on some matters pursuant to the Company's organizational documents and Delaware law, including votes on the election of directors and specified significant corporate transactions.

*Voting Power.* In light of the Company's capital structure described above, although Mr. Sudikoff is the beneficial owner of approximately 11% of the Company's "low vote" Class A Common Stock, the percentage of the total voting power of all of the Company's voting securities represented by the securities beneficially owned by Mr. Sudikoff's as of February 8, 2002 was approximately 3%.

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*No Other Relationships.* Mr. Sudikoff does not currently serve, and has not previously served, as an officer or director of the Company, nor has he otherwise participated in the operations or management of the Company.

### The Final Judgment and Plea

The final judgment against, and the guilty pleas by, Mr. Sudikoff described below were based on complaints by the Securities and Exchange Commission (the "Commission") and the United States Attorney's Office. The complaints which resulted in such judgment and the pleas are the subject of Commission Litigation Release No. 15522 (October 1, 1997), and such judgment and pleas are described under "Enforcement Proceedings" in Issue 2000-165 of the SEC News Digest (August 28, 2000).

The complaints by the Commission and the United States Attorney's office included allegations that Mr. Sudikoff, among others, fraudulently inflated earnings of IDB Communications Group, Inc., a public issuer unaffiliated with the Company ("IDB"), in order to meet analysts' projections. Mr. Sudikoff and others then allegedly disseminated the overstated earnings to the public in a press release and a Quarterly Report on Form 10-Q filed with the Commission. Mr. Sudikoff and the others also allegedly concealed the alleged fraud by fabricating documents, knowingly making false adjusting entries on IDB's books and records in circumvention of IDB's internal controls, and lying to IDB's independent auditors. Mr. Sudikoff also allegedly engaged in insider trading in IDB stock in connection with the foregoing actions, and allegedly tipped material nonpublic information to his parents, who also were alleged to have traded in IDB stock.

On August 21, 2000, a final judgment of permanent injunction and other relief (the "Judgment") was entered against Mr. Sudikoff in the United States District Court for the Central District of California permanently enjoining him from violating the following:

- the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act");
- the quarterly reporting provisions of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 under the Exchange Act;

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- the internal control and books and records provisions of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder; and
- the prohibition against lying to accountants set forth in Exchange Act Rule 13b2-2.

In addition, Mr. Sudikoff was permanently enjoined from violating the antifraud provisions of Section 17(a) of the Securities Act and the stock ownership reporting provisions of Section 16(a) of the Exchange Act and Rule 16a-3 thereunder. Mr. Sudikoff consented to the entry of the judgment without admitting or denying the allegations in the complaint.

In a related criminal action, Mr. Sudikoff pled guilty in 1999 to two counts of securities fraud for insider trading and one count of failing to disclose certain stock trades to the Commission (such pleas collectively, the "Plea").

### III. Discussion

Clauses (1) and (2), respectively, of Rule 262(b) provide disqualifications from offerings under Regulation A if any "beneficial owner of 10% or more of any class" of equity securities of an issuer:

- "(1) has been convicted within 10 years prior to the filing of the offering statement required by §230.252 of any felony or misdemeanor in connection with the purchase or sale of any security, [or] involving the making of a false filing with the Commission . . . ."; or
- "(2) . . . is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within 5 years prior to the filing of such offering statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security, [or] involving the making of a false filing with the Commission . . . ."

The introductory paragraph of Rule 262 provides that these disqualifications shall not apply if the Commission determines, "upon a showing of good cause and without prejudice to any other action by the Commission," that "it is

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not necessary under the circumstances that the exemption provided by this Regulation A be denied . . . ."

For the following reasons, the Company requests that the Commission (and, where possible, the Division of Corporation Finance pursuant to delegated authority) waive any disqualifying effect that the Judgment, the Plea or the other actions of Mr. Sudikoff in connection therewith may have on the Company's eligibility to rely on the exemption from registration provided by Regulation A to consummate the Regulation A Offering, based on a determination that it is not necessary that such exemption from registration be denied:

1. Although Mr. Sudikoff is the beneficial owner of approximately 11% of the Class A Common Stock, and thus is technically a stockholder within the scope of Rule 262(b), the percentage of the total voting power of all of the Company's voting securities represented by the securities beneficially owned by Mr. Sudikoff is approximately 3%. The voting power represented by Mr. Sudikoff's ownership of the "low vote" Class A Common Stock is significantly less than the voting power typically exercisable by owners of 10% or more of a class of an issuer's equity securities that are subject to Rule 262(b). As a result, Mr. Sudikoff does not have the power to control or significantly influence the Company generally or in connection with the conduct of the Regulation A Offering or any other securities offering by the Company.

2. Mr. Sudikoff does not currently serve, nor has he previously served, as an officer or director of the Company, nor has he otherwise participated in the operations or management of the Company. Therefore, Mr. Sudikoff will not be involved in the administration or management of the proposed Regulation A Offering or any other securities offering by the Company.

3. The actions resulting in the Judgment and the Plea did not involve either (i) the Company or any entity affiliated with the Company or (ii) the offering (by the Company or any other issuer) of securities pursuant to Regulation A or Regulation D under the Securities Act.

For the foregoing reasons, rendering the Company ineligible to rely on the Regulation A exemption as a result of the Judgment or the Plea would not serve any remedial or other purpose.

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#### IV. Conclusion

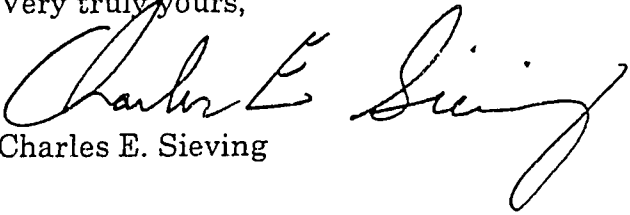
Based on the good cause showing set forth above, the Company requests that the Commission (and, where possible, the Division of Corporation Finance pursuant to delegated authority) waive the disqualifying provisions of Rule 262 with respect to the Judgment, the Plea and the other actions of Mr. Sudikoff in connection therewith to the extent they may be applicable to the Company in connection with the Regulation A Offering.

For your convenience, we have enclosed seven additional copies of this letter.

If you require additional information or if you have any questions or comments regarding this matter, please contact the undersigned at telephone number 202/637-5534 or, in the absence of the undersigned, Richard J. Parrino of this office at telephone 703/610-6174.

Please acknowledge receipt of this letter and its enclosures by stamping the enclosed extra copy of this letter and returning it to our messenger.

Very truly yours,

  
Charles E. Sieving

cc: PaeTec Corp.



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

00024

DIVISION OF  
CORPORATION FINANCE

February 25, 2002

Charles E. Sieving, Esq.  
Hogan & Hartson  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004-1109

Re: PaeTec Corp.

Dear Mr. Sieving

This is in response to your letter dated February 15, 2002, on behalf of the above-designated person, seeking relief pursuant to Rule 262 of Regulation A under the Securities Act of 1933 from disqualifications that arise by virtue of a final judgement of permanent injunction and other relief entered against Jeffrey P. Sudikoff on August 21, 2000.

The facts are set forth in your letter. You have set forth a number of reasons in support of the position that the exemption under Regulation A should not be denied on the basis of the applicable disqualifications.

On the basis of the facts set forth in your letter, the Division, pursuant to delegated authority, has determined that a showing of good cause has been made pursuant to Rule 262 and that under the circumstances, the exemption pursuant to Regulation A need not be denied. Accordingly, the application for relief from the disqualifying provisions of Regulation A is hereby granted.

Sincerely,

  
Richard K. Wulff, Chief  
Office of Small Business Policy

Act	33
Exemption	3(b)
Rule	262
Public Availability	2/25/02

Public Reference