

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 DIVISION OF FINANCE AND CORPORATE SECURITIES
 SECURITIES SECTION
 BEFORE THE DIRECTOR OF THE DEPARTMENT OF
 CONSUMER AND BUSINESS SERVICES
 STATE OF OREGON

5	In the Matter of:	)	O-97-0013
)	
6		)	FINAL ORDER
		)	CEASE AND DESIST
7	Fresh NetSoft, Inc.	)	DENIAL OF EXEMPTIONS
	Cybernet International, Inc.	)	and
	Gateway Consulting, Inc.	)	ASSESSMENT OF CIVIL PENALTIES
8	A. Blaine Randall	)	DEFAULT ORDER
	Chuck Kempton	)	for
9	Joseph Howard Champion, aka	)	Cybernet International, Inc.
	Allan Wells,	)	Gateway Consulting, Inc.
10	Pather Lloyd Neff	)	A. Blaine Randall
	Clay Sanger and	)	Joseph Howard Champion
11	Alan Poon,	)	Clay Sanger
		)	Alan Poon
12	Respondents.)	

On July 15, 1997 the Director of the Department of Consumer and Business Services for the State of Oregon, acting by the authority of the Oregon Securities Law, Chapter 59 of the Oregon Revised Statutes (hereinafter cited as ORS Chapter 59), issued Administrative Order 0-97-0013 to Cease and Desist, with Denial of Exemptions, Assessment of Civil Penalties and Notice of Right to Hearing.

All respondents were duly served with a certified copy of Administrative Order 0-97-0013 and Notice of Right to Hearing. All respondents made a timely request for hearing through counsel on July 23, 1997. On September 23, 1997 counsel for all respondents provided notice to this office that they no longer represented any respondents in this



1 certain respondents were indicted by a federal grand jury.
2 It was agreed to grant respondents 30 days in which to
3 obtain substitute counsel. The administrative hearing was
4 set for November 25, 1997 at 9:00 a.m., and on October 23,
5 1997 notice of the hearing date was delivered to each
6 respondent by certified mail to the last business address
7 for Respondent Fresh NetSoft, Inc. The receipts for
8 certified mail that were addressed to Respondents Cybernet
9 International, Inc. and Gateway Consulting, Inc. were each
10 signed for and returned to this office. The certified
11 letters addressed to Respondents A. Blaine Randall, Joseph
12 Champion, Clay Sanger, Pather Lloyd Neff, Alan Poon were
13 marked "Refused" and returned. Respondents Fresh NetSoft,
14 Inc., Chuck Kempton and Pather Lloyd Neff, each through his
15 attorney, requested an extension of the hearing date, and
16 the administrative hearing as to those respondents was reset
17 for January 12, 1998 at 9:00 a.m. A fourth attorney called
18 on behalf of Alan Poon, but stated that he did not represent
19 Alan Poon. This office received no communication by
20 telephone, facsimile or U.S. mail from Respondents Cybernet
21 International, Inc., Gateway Consulting, Inc., A. Blaine
22 Randall, Joseph Howard Champion, Clay Sanger, Alan Poon, or
23 from substitute legal counsel for any of them.

24 NOW THEREFORE, after consideration of the Investigative
25 Report and accompanying exhibits submitted in this matter by
26 Jeffrey Fahs, the Director hereby issues the following



1 Findings of Fact, Conclusions of Law and Final Order:

2 **FINDINGS OF FACT**

3 The Director FINDS that:

4 1. Fresh NetSoft, Inc. (hereinafter "Fresh NetSoft")
5 is an Arizona corporation with principal offices at 1845
6 South Dobson Road, Suite 213, Mesa, AZ 85202. Fresh NetSoft
7 was formed for the purpose of acquiring ownership rights in
8 various software products which are used in the management
9 of computer networks.

10

11 2. Cybernet International, Inc. (hereinafter
12 "Cybernet") is a Nevada corporation with principal offices
13 at 1845 South Dobson Road, Suite 213, Mesa, AZ 85202.
14 Cybernet specializes in the development of promising
15 companies in the area of communications and electronics.

16 3. In or about August 1995, Cybernet acquired 100%
17 ownership of Fresh NetSoft through an exchange of Cybernet
18 common stock for all of the outstanding common stock of
19 Fresh NetSoft. Cybernet is presently the beneficial owner
20 of approximately 75% of the outstanding common stock of Fresh
21 NetSoft. Cybernet also provides financial, legal and
22 operations expertise and services to Results.

23 4. Gateway Consulting, Inc. (hereinafter "Gateway
24 Consulting") is an Arizona corporation with principal
25 offices at 1845 South Dobson Road, Suite 213, Mesa, AZ
26 85202. Gateway Consulting is a wholly owned subsidiary of



1 Cybernet and was formed for the primary purpose of marketing
2 the sale of Fresh NetSoft Class A Convertible Preferred
3 Stock (hereinafter "Class A Preferred") and Fresh NetSoft
4 Common Stock (hereinafter "Common Stock") to the public.

5 5. A. Blaine Randall (hereinafter "Randall") is the
6 CEO and a Director of Fresh NetSoft. Randall is the
7 president and beneficial owner of 5% or more of the common
8 stock of Cybernet. Randall is an authorized representative
9 of Cybernet, Fresh NetSoft and Gateway Consulting.
10 Randall's last known business address is at 1845 South
11 Dobson Road, Suite 213, Mesa, AZ 85202.

12 6. Chuck Kempton (hereinafter "Kempton") is the
13 president and a Director of Fresh NetSoft. Kempton is also
14 an authorized representative of Cybernet, Fresh NetSoft and
15 Gateway Consulting. Kempton's last known business address
16 is at 1819 E. Southern, A10, Mesa, AZ 85204.

17 7. Joseph Howard Champion (hereinafter "Champion"),
18 aka Allan Wells, CRD 2140271, is a manager and/or authorized
19 representative of Cybernet, Fresh NetSoft and Gateway
20 Consulting. Champion's last known business address is at
21 1845 South Dobson Road, Suite 213, Mesa, AZ 85202.

22 8. Pather Lloyd Neff (hereinafter "Neff") is a
23 salesperson and/or an authorized representative of Cybernet,
24 Fresh NetSoft and Gateway Consulting. Neff's last known
25 business address is at 1845 South Dobson Road, Suite 213,
26 Mesa, AZ 85202.



1 9. Clay Sanger (hereinafter "Sanger") is a salesperson
2 and/or an authorized representative of Cybernet, Fresh
3 NetSoft and Gateway Consulting. Sanger's last known
4 business address is at 1845 South Dobson Road, Suite 213,
5 Mesa, AZ 85202.

6 10. Alan Poon (hereinafter "Poon") is a salesperson
7 and/or an authorized representative of Cybernet, Fresh
8 NetSoft and Gateway Consulting. Poon's last known business
9 address is at 1845 South Dobson Road, Suite 213, Mesa, AZ
10 85202.

11 11. Neither Fresh NetSoft, Cybernet nor Gateway
12 Consulting, nor any of their representatives, are currently,
13 nor have they ever been, licensed as a broker-dealer, or as
14 salespersons for a broker-dealer or for an issuer, to effect
15 securities transactions in the state of Oregon.

16 12. Neither Randall, Kempton, Champion, Neff, Sanger
17 nor Poon are now, nor have they ever been, licensed to
18 effect securities transactions in Oregon.

19 13. Fresh NetSoft has caused a Form D to be filed with
20 the United States Securities and Exchange Commission serving
21 notice that Fresh NetSoft would be issuing 2,000,000 shares
22 of its Class A Preferred pursuant to a Rule 506 offering.

23 14. Fresh NetSoft has caused a Form D to be filed with
24 the United States Securities and Exchange Commission serving
25 notice that Fresh NetSoft will be issuing 1,250,000 shares
26 of its Common Stock pursuant to a Rule 506 offering.



1 15. Neither the Fresh NetSoft Class A Preferred Stock
2 nor the Fresh Netsoft Common Stock has been registered for
3 sale in the state of Oregon.

4 16. Gateway Consulting, acting by and through its
5 representatives, is marketing Fresh NetSoft Class A
6 Preferred and Common Stock to the public by means of
7 unsolicited telephone contact with potential investors.

8 17. After making contact with an investor who expresses
9 an interest in purchasing either the Class A Preferred or
10 the Common Stock, Gateway Consulting mails the potential
11 investors a packet of information. The information packet
12 includes:

13 a) a "CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM"
14 (hereinafter "PPM");

15 b) a glossy brochure describing Fresh NetSoft
16 products and potential profit through ownership of the Fresh
17 NetSoft convertible preferred stock (hereinafter the
18 "Brochure");

19 c) an investor questionnaire;

20 d) a copy of a Form D filing by Fresh NetSoft
21 with the Securities and Exchange Commission;

22 e) a subscription agreement;

23 f) a page titled "RESCISSION POLICY";

24 g) a page giving a brief overview of Fresh
25 NetSoft and its potential software market; and

26 h) a video tape demonstrating the capabilities of



1 the software owned by Fresh NetSoft.

2 18. Investors who want to purchase shares of the
3 Class A Preferred fill out the investor questionnaire,
4 subscription agreement, and rescission policy, and then mail
5 these documents to Fresh NetSoft along with a check made
6 payable to "Fresh NetSoft, Inc. c/o Cybernet International,
7 Inc."

8 19. The Class A Preferred PPM states that the Class A
9 Preferred are being offered at \$1.00 per share with a
10 minimum purchase of \$10,000.00, although Respondents reserve
11 the right to accept investments below the minimum. The
12 Class A Preferred PPM also states that the offering period
13 is to be from August 31, 1995, through September 1, 1996,
14 unless extended by Fresh NetSoft for an additional one
15 hundred eighty (180) days.

16 20. The Class A Preferred PPM lists the following
17 suitability standard for investors:

- 18 a) net worth of at least \$250,000; or
19 b) net worth of at least \$150,000 and taxable
20 income of at least \$75,000 during the last year and
21 anticipated for the current year;
22 c) each investor is also required to make
23 representations as to their financial knowledge and intent
24 to purchase for long-term investment and not with a view to
25 resale.

26 21. The Class A Preferred PPM does not define the term



1 "accredited investor."

2 22. The Class A Preferred PPM contains notices to
3 residents of various specified states disclosing that these
4 securities have not been registered for sale in that state
5 and may not be resold from that state unless through a
6 transaction exemption. The Class A Preferred PPM does not
7 contain any such notice to Oregon investors.

8 23. The Class A Preferred PPM states that the Class A
9 Preferred is being sold by Fresh NetSoft through its
10 officers, directors and employees, as well as through
11 selected NASD broker-dealers. The Class A Preferred PPM
12 also states that up to \$300,000.00 of the \$2,000,000.00
13 offering will be used to pay sales commissions of up to 15%
14 to persons selling the Class A Preferred shares, including
15 employees or qualified broker-dealers.

16 24. The Class A Preferred PPM "EXHIBIT A" contains pro
17 forma income statements for years one through six following
18 the conclusion of the Class A Preferred offering. The
19 "assumptions and projections" for these income statements
20 predict that Fresh NetSoft will be turning a profit by the
21 third month of year one, and that the net profit will
22 increase at an annual rate of approximately 18% from year
23 one to two, 62% from year two to three, 51% from year three
24 to four, 40% from year four to five, and 40% from year five
25 to six. The Class A Preferred PPM does not contain any
26 explanation of the basis for the assumptions used to

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1 calculate these revenue and profit projections.

2 25. The Class A Preferred PPM does not contain any
3 audited or unaudited historical income statements or balance
4 sheets. The Class A Preferred PPM contains an unaudited
5 current balance sheet, dated as of August 31, 1995, but no
6 current income statement.

7 26. Randall, Champion, Neff and Sanger, acting
8 collectively and individually as representatives of Fresh
9 NetSoft, Cybernet and Gateway Consulting, offered and/or
10 sold Fresh NetSoft Class A Preferred to nine(9) or more
11 Oregon investors. The Oregon investors purchased a total of
12 22,700 shares for a total price of \$22,700.00. Commissions
13 were paid to the salesperson on each sale to an Oregon
14 investor, totalling \$3,405.00 or 15% of each purchase.

15 27. None of the Respondents provided any of the
16 following information to Oregon investors in connection with
17 the purchase of Class A Preferred shares:

- 18 a. information that the Class A Preferred shares
19 were required to be registered for sale in Oregon;
- 20 b. information that Respondents were not licensed
21 to effect securities transactions in Oregon;
- 22 c. a prospectus that included complete and
23 accurate financial information about the issuer and the
24 Class A Preferred shares being offered;
- 25 d. complete and accurate information upon which
26 the underlying financial assumptions to the pro forma income



1 statements in Exhibit A of the Prospectus were based; and
2 e. a definition of the term "accredited investor"
3 as that term is defined in section 2(15) of the Securities
4 Act of 1933 and OAR 441-35-010.

5 28. Respondents made the following statements to Oregon
6 investors in connection with the purchase of Class A
7 Preferred shares:

8 a. Respondents stated that the Class A Preferred
9 shares were registered for sale in Oregon;

10 b. Respondents stated that Sanger and Champion
11 were licensed to sell securities in Oregon;

12 c. Respondents stated that Fresh NetSoft would be
13 taking its stock public in the fall of 1996 at a substantial
14 premium to the price at which the Class A Preferred was
15 being offered in the private placement; and

16 d. Respondents stated that investors in Class A
17 Preferred shares only have a ten day period within which to
18 obtain rescission of their investment.

19 29. Seven (7) or more of the Oregon investors in the
20 Class A Preferred submitted investor questionnaires to
21 Respondents. Respondents told each Oregon investor not to
22 disclose any personal financial information on the
23 questionnaires. Instead, Respondents told each Oregon
24 investor to hand-write on the questionnaire the following
25 statement: "I am an accredited investor. I do not wish to
26 disclose the details of any of my personal information."



1 Respondents did not define the term "accredited investor" to
2 any of the Oregon investors.

3 30. None of the eight(8) Oregon investors who purchased
4 the Class A Preferred stock has a net worth exceeding
5 \$1,000,000. Nor does any of these eight(8) Oregon investors
6 have an income in excess of \$200,000 in each of the two most
7 recent years, or joint income with that person's spouse in
8 excess of \$300,000 in each of those years, and has a
9 reasonable expectation of reaching such income level in the
10 current year.

11 31. Investors who are interested in purchasing Fresh
12 NetSoft Common Stock are mailed a copy of a "CONFIDENTIAL
13 PRIVATE PLACEMENT MEMORANDUM" (hereinafter "Common Stock
14 PPM").

15 32. The Common Stock PPM states that the Common Stock
16 is being offered at \$4.00 per share with a minimum purchase
17 of 5,000 shares, although Respondents reserve the right to
18 accept investments below the minimum. The Common Stock
19 Prospectus also states that the offering period is to
20 continue until December 31, 1996, unless extended by
21 Respondents.

22 33. The Common Stock PPM states: "That this investment
23 is only suitable for person who are 'accredited investors'
24 as that term is defined in Rule 501 of Securities and
25 Exchange Commission Regulation 'D.'" Respondents also
26 retain the right to make exceptions to this suitability



1 standard.

2 34. The Common Stock PPM contains notices to residents
3 of various specified states disclosing that these securities
4 have not been registered for sale in that state and may not
5 be resold from that state unless the security is registered
6 or sold through a transaction exemption. The notice given
7 to Oregon residents does not contain such a disclosure. The
8 notice to Oregon residents states that:

9

10 THE SECURITIES BEING OFFERED HEREBY HAVE NOT BEEN
11 REGISTERED WITH THE CORPORATION COMMISSIONER OF
12 THE STATE OF OREGON UNDER PROVISIONS OF OAR 815
13 DIVISION 36. THE INVESTORS IS ADVISED THAT THE
14 COMMISSIONER HAS MADE ONLY A CURSORY REVIEW OF THE
REGISTRATION STATEMENT AND HAS NOT REVIEWED THIS
DOCUMENT SINCE THIS DOCUMENT IS NOT REQUIRED TO BE
FILED WITH THE COMMISSIONER.

14

15 The Division of Finance and Corporate Securities has not
16 conducted any review of a registration statement for Fresh
17 NetSoft Common Stock.

18 35. The Common Stock PPM states that the Common Stock
19 is being sold by Fresh NetSoft through its officers,
20 directors and employees, as well as through selected NASD
21 broker-dealers. The Common Stock PPM also states that up to
22 \$750,000 of the \$5,000,000 offering will be used to pay
23 sales commissions of up to 15% to persons selling the Common
24 Stock.

25 36. The Common Stock PPM states that Fresh NetSoft
26 anticipates doing a public offering via NASDAQ OTC in the

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1 Fall of 1997 or Spring of 1998 at between \$14.58 and \$46.75
2 per share.

3 37. The Common Stock PPM states that "[e]ven the
4 lowest, most conservative estimate . . . produces a future
5 investment value of \$41,671 [from an initial investment of
6 \$20,000]."

7 38. The Common Stock PPM does not contain any audited
8 or unaudited historical income statements, nor any audited
9 balance sheets. The Common Stock PPM contains unaudited
10 balance sheets dated as of December 31, 1995 and April 18,
11 1996, but no current income statement.

12 39. The Common Stock PPM contains a projected income
13 statement for fiscal years 1997 through 2001. This
14 projected income statement anticipates growth in net profits
15 of 97.7% from 1997 to 1998, 71.7% from 1998 to 1999, 68.6%
16 from 1999 to 2000, and 56.2% from 2000 to 2001.

17 40. Investors who choose to purchase shares of the
18 Common Stock mail a check to Fresh NetSoft, Inc., 1845 South
19 Dobson, Suite 213, Mesa, AZ 85202, that is made payable to
20 "FRESH NETSOFT, INC."

21 41. Randall, Champion, Neff and Sanger, acting
22 collectively and individually as agents for Fresh NetSoft,
23 Cybernet and Gateway Consulting, offered and sold Fresh
24 NetSoft Common Stock to one(1) or more Oregon investors.
25 Commissions were paid to the salesperson on each sale to an
26 Oregon investor equal to 15% of each purchase.

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1 3. Respondents Cybernet and Gateway Consulting, acting
2 by and through their authorized representatives, Randall,
3 Champion, Sanger and Poon, and Respondents Randall,
4 Champion, Sanger and Poon, collectively and individually,
5 offered and/or sold the Class A Convertible Preferred Stock
6 and Common Stock in transactions in which commissions were
7 paid in connection with each transaction.

8 4. Respondents Cybernet and Gateway Consulting, acting
9 by and through their authorized representatives, Randall,
10 Champion, Sanger and Poon, and Respondents Randall,
11 Champion, Sanger and Poon, collectively and individually,
12 fraudulently attempted to evade provisions of the Oregon
13 Securities Law when they told Oregon investors in the Class
14 A Convertible Preferred Stock to write on investor
15 questionnaires that they were an "accredited investor"
16 without defining that term and when none of the Oregon
17 investors in the Class A Convertible Preferred Stock
18 satisfied the Division of Finance and Corporate Securities'
19 definition of "accredited investor" in OAR 441-35-0010.

20 5. Respondents Cybernet and Gateway Consulting, acting
21 by and through their authorized representatives, Randall,
22 Champion, Sanger and Poon, and Respondents Randall,
23 Champion, Sanger and Poon, collectively and individually,
24 offered and/or sold unregistered securities in violation of
25 ORS 59.055 when:

26 a. Respondents Randall, Champion and Sanger,

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1 acting collectively and individually, offered and/or sold
2 shares of Fresh NetSoft Class A Convertible Preferred Stock
3 to nine(9) or more Oregon investors; and

4 b. Respondents Randall, Champion and Sanger,
5 acting collectively and individually, offered and/or sold
6 shares of Fresh NetSoft Common Stock to one(1) or more
7 Oregon investor.

8 6. Respondents Cybernet and Gateway Consulting, acting
9 by and through their authorized representatives, Randall,
10 Champion, Sanger and Poon, and Respondents Randall,
11 Champion, Sanger and Poon, collectively and individually,
12 sold securities in unlicensed securities transactions in
13 violation of ORS 59.165 when:

14 a. Respondents Randall, Champion and Sanger,
15 acting collectively and individually, sold shares of Fresh
16 NetSoft Class A Convertible Preferred Stock to eight(8)
17 Oregon investors; and

18 b. Respondents Randall, Champion and Sanger,
19 acting collectively and individually, sold shares of Fresh
20 NetSoft Common Stock to one(1) Oregon investor.

21 7. Respondents Cybernet and Gateway Consulting, acting
22 by and through their authorized representatives, Randall,
23 Champion, Sanger and Poon, and Respondents Randall,
24 Champion, Sanger and Poon, collectively and individually,
25 omitted to state material facts in connection with the offer
26 and/or sale of a security in violation of ORS 59.135(2) when

1 they did not provide investors with the information:

2 a. information described in paragraphs 27 and 42
3 of the Findings of Fact herein;

4 b. information that would support a basis for the
5 projected initial public offering price of Fresh NetSoft's
6 common stock on NASDAQ; and

7 c. information that would support a basis for the
8 projected minimum return of approximately 108% on an
9 investment in the Common Stock.

10 7. Respondents Cybernet and Gateway Consulting, acting
11 by and through their authorized representatives, Randall,
12 Champion, Sanger and Poon, and Respondents Randall,
13 Champion, Sanger and Poon, collectively and individually,
14 made untrue statements of material facts in connection with
15 the offer and/or sale of a security in violation of
16 ORS 59.135(2) when they:

17 a. stated that the Class A Convertible Preferred
18 Stock were registered for sale in Oregon;

19 b. stated that Sanger and Champion were
20 registered to sell shares of Class A Convertible Preferred
21 Stock in Oregon;

22 c. stated that Fresh NetSoft would be taking its
23 stock public in the fall of 1996 at a substantial premium to
24 the price at which the Class A Preferred was being offered
25 in the private placement;

26 d. stated that investors in the Class A



1 Convertible Preferred Stock only had a ten day period within
2 which to obtain rescission of their investment; and
3 e. told each investor in the Class A Convertible
4 Preferred Stock that they qualified as an accredited
5 investor.

6 ORDER

7 NOW THEREFORE, THE DIRECTOR ORDERS that:

8 1. Respondents Cybernet International, Inc., Gateway
9 Consulting, Inc., A. Blaine Randall, Joseph Howard Champion,
10 Clay Sanger and Alan Poon shall **CEASE AND DESIST** from:

11 a. Offering and/or selling securities in the
12 state of Oregon in violation of ORS Chapter 59;

13 b. Violating any of the provisions of ORS Chapter
14 59 and Oregon Administrative Rules Chapter 441.

15 2. Pursuant to the authority of ORS 59.045,
16 Respondents Cybernet International, Inc., Gateway
17 Consulting, Inc., A. Blaine Randall, Joseph H. Champion,
18 Clay Sanger and Alan Poon are **DENIED** the use of any
19 exemptions authorized by ORS 59.025 and/or 59.035.

20 3. Pursuant to the authority of ORS 59.995, the
21 Director **ASSESSES** the following civil penalties:

22 a. Respondents Cybernet International, Inc.,
23 Gateway Consulting, Inc., A. Blaine Randall, Joseph H.
24 Champion, Clay Sanger and Alan Poon, jointly and severally,
25 are **ORDERED TO PAY** the sum of \$20,000.00 for ten(10)
26 violations of ORS 59.055;



