

SIMPSON THACHER & BARTLETT LLP

2550 HANOVER STREET
PALO ALTO, CA 94304
(650) 251-5000

—
FACSIMILE: (650) 251-5002

DIRECT DIAL NUMBER
650-251-5285

E-MAIL ADDRESS
ragrimm@stblaw.com

October 31, 2006

VIA FEDERAL EXPRESS

Ms. Carol McGee
Ms. Mary Beth Breslin
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: VG Holding Corp.—Application for No-Action Relief Under Section 12(h) of the Securities Exchange Act of 1934, as amended

Ladies and Gentlemen:

On behalf of VG Holding Corp., a Delaware corporation (“VG” or the “Company”), we hereby apply for an exemption pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) from the registration requirements of Section 12(g) of the Exchange Act or request that the Staff of the Office of Chief Counsel, Division of Corporation Finance (the “Staff”) provide its assurance pursuant to a no-action letter that it will not recommend enforcement action to the Securities and Exchange Commission (the “Commission”) if the Company does not comply with the registration requirements of Section 12(g) of the Exchange Act with respect to options granted, and to be granted, to the Company’s employees, directors, and consultants and the employees, directors, and consultants of the Company’s subsidiaries, under its 2005 Stock Incentive Plan, as amended (the “Plan”). This letter replaces in its entirety the letter submitted to the Office of Chief Counsel, Division of Corporation Finance (the “Division”), dated October 18, 2006, which addressed the same topic.

BACKGROUND

The Company

The Company was formed on August 8, 2005 for the purpose of acquiring Pandemic Group, LLC,

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 2

Securities Exchange Act
of 1934 – Section 12(h)

BioWare Corp., and their respective subsidiaries. The Company and its subsidiaries are engaged in the business of creating and developing video games. The Company has approximately 575 employees in total, with approximately 200 employees performing services primarily in the United States. The remaining employees perform services primarily in Canada and Australia. The Company's domestic operations consist primarily of (i) its headquarters operations in Menlo Park, California, (ii) Pandemic Studios, a subsidiary of the Company and one of its development studios in Los Angeles, California, and (iii) a development studio in Austin, Texas that supports BioWare Corp., a subsidiary of the Company. The Company's international operations consist primarily of the activities of BioWare Corp. (other than its Austin development studio) in Canada and a development studio in Australia that supports the Pandemic Studios development studio.

The Company's authorized capital consists of 440,000,000 shares of common stock, par value \$0.01 per share, and 10,000,000 shares of preferred stock, par value \$0.01 per share, including one share of Series A Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), and one share of Series B Preferred Stock, par value \$0.01 per share (the "Series B Preferred Stock"). As of the date hereof, the Company has a total of 208,387,061 outstanding shares of common stock, one outstanding share of Series A Preferred Stock, one outstanding share of Series B Preferred Stock and no other outstanding shares of preferred stock. In addition, VG Exchange Corp. a Canadian corporation and a subsidiary of the Company, has 71,963,258 issued and outstanding exchangeable shares, which are exchangeable into an equal number of shares of the Company's common stock. As of the date hereof, the Company's outstanding common stock is held by 12 stockholders, the Company's outstanding Series A Preferred Stock is held by one stockholder, the Company's outstanding Series B Preferred Stock is held by one stockholder and the outstanding exchangeable shares are held by 229 shareholders of VG Exchange Corp. Additionally, as of the date hereof, there were 492 optionholders under the Plan, and each of the 492 optionholders were employees, directors, or consultants of the Company or its subsidiaries.¹ Collectively, the 492 optionholders held options to acquire 28,170,341 shares of its common stock. As of the date hereof, and at all times prior to the date hereof, the Company had not issued options to more than 500 holders under the Plan.

Holders of the preferred stock of the Company are not entitled to receive dividends, whereas the holders of the common stock of the Company are entitled to receive dividends if and when declared by the Company. Under certain circumstances specified in the Company's certificate of incorporation, the Company will be required to redeem the outstanding Series A Preferred Stock and outstanding Series B Preferred Stock for a redemption price equal to \$1.00 per share. Holders of the common stock have no such redemption rights. In light of these substantial differences in their respective rights and powers when compared to options granted under the Plan, we are of the opinion that the common stock, preferred stock and exchangeable shares are not part of the same class of securities as options granted under the Plan. Accordingly, the scope of relief we are requesting on behalf of VG does not include the common stock or any preferred stock (including the Series A

¹ As used herein, references to a "subsidiary" refer to an issuer's majority owned subsidiary as described in Rule 701(c) of the Rules promulgated under the Securities Act of 1933, as amended.

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 3

Securities Exchange Act
of 1934 – Section 12(h)

Preferred Stock or the Series B Preferred Stock) of the Company.

The Company currently has total assets in excess of ten million dollars (\$10,000,000) in value and expects to continue to possess total assets in excess of that amount for the foreseeable future.

No class of the Company's equity securities are traded or quoted on a national stock exchange, automated trading system, or similar trading market and the Company is not subject to the periodic reporting requirements of Section 13 and 15(d) of the Exchange Act.

The Company has expressed that it may become a public company within the next several years, although no specific dates have been set and the Company has not contractually committed to ever becoming a public company.

The Plan

Employees, directors, and consultants of the Company and its subsidiaries are eligible to participate in the Plan. The stockholders of the Company have approved the issuance of not more than 51,983,480 shares of Company common stock under the Plan in compensatory circumstances only. Although as of the date hereof and at all times prior to the date hereof, there were fewer than 500 holders of options issued under the Plan, the Company intends to grant additional options under the Plan such that the Company expects that the number of holders of options issued under the Plan will equal or exceed 500 in the near future.

The terms of the Plan permit options to be granted to individuals who serve as consultants to the Company or its subsidiaries. The Company hereby confirms that any consultants who participate in the Plan are limited to those consultants who satisfy the definition of "consultants or advisors" set forth in Rule 701(c)(1) under the Securities Act of 1933, as amended (the "Securities Act"), and therefore stock awards to these individuals are compensatory in nature and eligible for the exemption from the registration requirements set forth under Section 5 of the Securities Act provided by Rule 701. Each stock option granted to any participant under the Plan would be compensatory in nature and eligible for the exemption from the registration requirements set forth under Section 5 of the Securities Act provided by Rule 701.

The intent of the Plan is to aid the Company in attracting, motivating, and retaining service providers of outstanding ability by offering such service providers an opportunity to receive grants of Company stock-based awards, thereby increasing their personal interest in the growth and success of the Company. Unless the Board of Directors of the Company (the "Board") terminates the Plan at an earlier date, the Plan terminates ten years from the date of its adoption.

The Plan is administered by the Board, although the Board has the discretion to delegate some or all of this authority to administer the Plan to a committee of the Board. The Board has the discretion to determine which eligible persons receive options. The Plan authorizes the Board to grant both

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 4

Securities Exchange Act
of 1934 – Section 12(h)

“incentive stock options” as defined under the Internal Revenue Code of 1986, as amended (the “Code”), and “nonstatutory stock options.” Although the Plan also authorizes the Board to grant to eligible participants other Company stock-based awards, including stock bonuses, restricted stock purchase awards, stock appreciation rights, and restricted stock units, the Company has not issued these other types of stock-based awards. The Company represents that it will not issue any award other than options under the Plan so long as the Company is relying on the relief granted in response to this request.

Summary of the Options

The Plan grants the Board discretion to determine the specific terms of each option granted within the range of terms permitted under the Plan. Each option is documented by an individual stock option agreement between the Company and the optionholder and a stock option grant notice, stating the terms and conditions thereof, including number of shares of common stock subject to the option grant, the exercise price, the option term, vesting provisions and restrictions on transfer.

The following is a summary of the material terms of the Plan and the standard forms of option agreement currently used by the Board.

1. The number of shares of common stock subject to each option is determined by the Board at the time the option is granted.
2. The exercise price for each share of common stock subject to an option is determined by the Board at the time of grant. The exercise price for an incentive stock option shall not be less than 100% of the fair market value per share of common stock on the date of grant; the exercise price for a nonstatutory stock option shall not be less than 100% of the fair market value per share of common stock on the date of grant. However, if the recipient of an option is a 10% shareholder, then the option price per share shall not be less than 110% of the fair market value on the date of grant. So long as there is not a public market for the common stock, the fair market value is the fair market value per share established by the Board in good faith. The exercise price will be paid at the time of exercise in cash or by check, or at the discretion of the Board, may be paid by: (a) delivery of other shares of Company common stock held by the optionholder, or (b) in any other form of legal consideration acceptable to the Board; provided, however, that no loans or extensions of credit will be provided to the Company’s “Executive Officers” (as such term is used under the Sarbanes-Oxley Act of 2002), any member of the Board, or to any other person pursuant to the terms of the Plan in violation of the Sarbanes-Oxley Act of 2002.
3. The options generally have a term of seven years, subject to earlier termination if certain events occur, as discussed below.
4. While the Board has significant discretion in determining the vesting terms for each option

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 5

Securities Exchange Act
of 1934 – Section 12(h)

grant, the Board currently grants options with the following vesting schedule. Options vest as to 20% of the shares subject thereto on the first anniversary of the vesting commencement date, and vest as to an additional 1/60th of the shares subject thereto in monthly installments over the following 48 months, dependent on the performance of continued service for the Company and/or its subsidiaries by the optionholder.

5. To the extent that an option is vested, it will generally become exercisable upon vesting² until the earliest to occur of the following dates:
 - (a) the expiration of the term of such option;
 - (b) in the event of the optionholder's termination of employment for any reason other than death, disability or resignation for good reason (if and only to the extent such term is defined in the employment agreement for such optionholder), three months following such termination (or a longer or shorter period of time as provided in the optionholder's option agreement, but if the option was granted at a time when no public market for the common stock existed, this period cannot be less than 30 days);
 - (c) in the event of the optionholder's termination of employment due to the optionholder's disability, twelve months following such termination;
 - (d) in the event of the optionholder's termination of employment due to the optionholder's death, twelve months following such termination of employment; and
 - (e) in the event of the optionholder's termination of employment on account of the optionholder's resignation for good reason (if and only to the extent such term is defined in the employment agreement for such optionholder), twelve months following such termination.
6. Neither the Plan nor the stock option agreements used under the Plan require an optionholder to exercise an option issued under the Plan. In addition, no Company program, policy or arrangement requires an optionholder to exercise an option issued under the Plan.
7. The obligation of the Company to issue common stock upon exercise of options granted under the Plan is subject to all applicable laws, rules and regulations and such approvals by any governmental agencies as may be required, including, without limitation, the effectiveness of any registration statement required under the Securities Act.

² Early exercise may be permitted for options granted under the Plan. However, shares that the optionholder receives upon early exercise may be subject to a repurchase option in favor of the Company. As stated below, the Company undertakes that so long as it is relying on the no-action relief granted pursuant to this request, it will repurchase all unvested shares upon termination of employment of any optionholder who had exercised an option prior to such option being fully vested.

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 6

Securities Exchange Act
of 1934 – Section 12(h)

8. In the event of a change in control of the ownership of the Company in which the option is not to be assumed or replaced with a substitute option which substantially preserves the economic value of the option as in effect immediately prior to the change in control or is not otherwise to be continued in effect by the Company or any successor entity in the change of control, then the Board has discretion to provide for: (a) payment in exchange for the cancellation of an option; (b) continuation of any options outstanding under the plan; or (c) termination of an option upon the consummation of the change of control, but only if the participant has been permitted to exercise an option prior to the change of control. Furthermore, at any time the board may provide for the acceleration of exercisability and/or vesting of an option.
9. Upon an optionholder's termination of employment, any options that have not yet vested on the date the optionholder's employment ends will be cancelled by the Company.
10. The holders of options granted under the Plan will have no voting or other rights as shareholders of the Company prior to exercise of the options.
11. Options granted under the Plan are not transferable other than by will or by the laws of descent and distribution, unless otherwise permitted by the Board under the limited circumstances described below. The Company undertakes that it will not permit the transfer of options during the lifetime of the holder of an option by such holder other than by gift to family members as defined under Rule 701 or pursuant to the terms of a domestic relations order, and no transferee shall be permitted to make a subsequent transfer (except back to the transferor or to the Company) so long as the Company is relying on the relief granted in response to this request. The Company hereby confirms that as of this date, the Board has not granted any options under the Plan with terms which are different than those described in this paragraph and will not grant any options under the Plan in the future with terms which are different than those described in this paragraph so long as the Company is relying on the relief granted in response to this request.
12. There will be no market or periodically available process or methodology that would allow holders of options granted under the Plan to receive any consideration or compensation for these options prior to the time of exercise.
13. The Board may amend, suspend, or terminate the Plan at any time; however, except for certain adjustments upon changes in the common stock, no amendment will be effective unless approved by the shareholders to the extent necessary to comply with applicable law. No amendment may materially impair any of the rights of a participant under any awards previously granted, without his or her written consent.

The Division may rely upon the summary descriptions of the terms of the Plan and the agreements evidencing the options granted thereunder which are contained in this letter. In reviewing this letter,

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 7

Securities Exchange Act
of 1934 – Section 12(h)

the Division may assume that all material terms of the Plan and the agreements evidencing the options granted thereunder are set forth in the body of this letter. In addition, we have attached copies of the Plan and standard form of option agreement.

The Company undertakes that it will not amend any term of the restrictive provisions of the Plan described in this letter so long as the Company is relying on the relief granted in response to this request. The Company also undertakes that it will not issue any option or other form of award or security under the Plan that is inconsistent with the representations made in this letter.

DISCUSSION

The Company's grant of options, both presently and in the future, under the Plan are compensatory in nature. Each option previously granted under the Plan was issued to an individual who would qualify to receive options in a transaction exempt from the registration requirements of the Securities Act pursuant to Rule 701(c) of the rules promulgated under the Securities Act. In some cases, however, options granted prior to the date hereof were exempt from the registration requirements of the Securities Act by reliance on Section 4(2) of the Securities Act. Any option previously granted that was not exempt from the registration requirements of the Securities Act under Section 4(2) of the Securities Act, was issued in compliance with Rule 701. The Company undertakes that it will not grant any options to any person other than an individual who would qualify to receive options in a transaction exempt from the registration requirements of the Securities Act pursuant to Rule 701(c) for so long as the Company is relying on the relief granted in response to this request. In addition, for so long as the Company is relying on the relief granted in response to this request, any options granted under the Plan will be exempt from the registration requirements of the Securities Act pursuant to (i) Rule 701(c) of the rules promulgated under the Securities Act, or (ii) Section 4(2) of the Securities Act.

Although it is our opinion that the grant of options under the Plan is not required to be registered under the Securities Act, it is possible that if 500 or more persons hold options for the Company's common stock, the Company might be required to register the options under Section 12(g) of the Exchange Act, unless no-action relief from this requirement is provided by the Staff or exemptive relief is granted under Section 12(h) of the Exchange Act.

Exchange Act Registration Requirements

As a general rule, Section 12(g) of the Exchange Act requires every issuer meeting the jurisdictional requirements of the Exchange Act, having total assets of more than \$1 million and a class of equity security (other than an exempted security) held of record by 500 or more persons, to register the security under the Exchange Act. Pursuant to its authority under Section 12(h), the Commission has promulgated Rule 12g-1, which exempts from the registration requirement of Section 12(g) any issuer whose total assets on the last day of its most recent fiscal year did not exceed \$10 million. Issuers are required to comply with the registration requirements within 120 days after the last day of

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 8

Securities Exchange Act
of 1934 – Section 12(h)

its first fiscal year when it first meets the total asset and record holder tests.

Section 12(g) was added to the Exchange Act by Section 3(c) of the Securities Acts Amendments of 1964, Pub. L. 88-467; 78 Stat. 565 (the “1964 Amendments”). Prior to the 1964 Amendments, the only securities required to be registered under the Exchange Act were those listed on a national securities exchange.

The purpose of Section 3(c) of the 1964 Amendments has been expressed in various ways:

- (a) The preamble to the legislation states that its purpose was “to extend disclosure requirements to the issuers of additional publicly traded securities.” (Emphasis added.)
- (b) A report of the House Committee on Interstate and Foreign Commerce accompanying H.R. 6793, the version of the bill introduced in the House of Representatives, states that “Section 3(c) of the bill would...provide for registration of securities traded in the over-the-counter market and for disclosure by issuers thereof comparable to the registration and disclosures required in connection with listed securities.” H.R. 6793, U.S. Code Cong. and Admin. News, 88th Cong. 2d Sess., at pages 3027-3028. (Emphasis added.)
- (c) A release of the Commission, citing a report on its study that made the legislative recommendations on the basis of which the 1964 Amendments were enacted, describes the scope of the registration and reporting provisions of the Exchange Act as extending “to all issuers presumed to be the subject of active investor interest in the over-the-counter market.” Exchange Act Release No. 18189, October 20, 1981 (citing Report of the Special Study of Securities Markets of the Securities and Exchange Commission, House Committee on Interstate and Foreign Commerce, H.R. Doc. No. 95, pt. 2, 88th Cong. 1st Sess. (1963) at pages 60-62). (Emphasis added.)
- (d) A later release of the Commission states that the numerical thresholds contained in Section 12(g) were selected because it was believed “that issuers in these categories had sufficiently active trading markets and public interest and consequently were in need of mandatory disclosure to ensure the protection of investors.” Exchange Act Release No. 23407, July 8, 1986. (Emphasis added.)

All of the above authorities strongly suggest that it was not the intent of Congress to require Exchange Act registration by an issuer that did not have “publicly traded securities” or “securities traded in the over-the-counter market,” and that was not the subject of “active investor interest in the over-the-counter market,” or “active trading markets and public interest.”

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 9

Securities Exchange Act
of 1934 – Section 12(h)

Authority of Commission to Grant Relief

Section 12(h) of the Exchange Act authorizes the Commission, upon application of an interested party, to exempt an issuer from Section 12(g) “if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and the extent of the activities of the issuer, income or assets of the issuer or otherwise, that such action is not inconsistent with the public interest or the protection of investors.”

Appropriateness of Exemption or Other Relief

Section 3(a)(11) of the Exchange Act defines “equity security” to include not only “any stock or similar security,” but also “any warrant or right to subscribe to or purchase a security.” As a result, it is possible that options to acquire shares of the Company’s common stock would be deemed to be a class of equity security such that if 500 or more persons were to hold the options, the Company would become subject to the registration requirements of Section 12(g) of the Exchange Act, unless an exemption or other relief from the registration requirements of Section 12(g) is granted to the Company.

Assuming that the Company will become subject to the registration requirements of Section 12(g) in the future if 500 or more persons hold options for its common stock, there would still be no public investors in the Company’s common stock and neither the common stock nor the options would be publicly traded. The history of the 1964 Amendments makes clear that Congress did not intend Section 12(g) to require the Company to register under these circumstances. Accordingly, the Company believes and it is our opinion that it would be appropriate for the Commission to grant an exemption or for the Staff to grant no-action relief from the registration requirements of Section 12(g) with respect to options granted under the Plan.

Number of Public Investors

Section 12(h) specifies a number of factors to be taken into account by the Commission in reviewing an application for an exemption. The first of these is the number of public investors in the issuer. As indicated above, the Company currently has no public investors who are holders of its common stock or its preferred stock. Furthermore, since any holders of options granted under the Plan have been granted such options without cash or other tangible consideration, the holders of those options cannot reasonably be considered investors in the Company. Indeed, the first time that these holders will have the opportunity to become investors in the Company is when and if the options become exercisable and they acquire common stock of the Company. As a result, it is our opinion that it can fairly be said that the holders of options granted under the Plan are not public investors in the Company.

The options under the Plan generally become exercisable upon vesting, with the exception of any optionholder for whom early exercise may be permitted. In addition, because of the lack of a public

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 10

Securities Exchange Act
of 1934 – Section 12(h)

market for the Company's common stock, the Company expects that relatively few optionholders who may acquire the contractual ability to exercise all or a portion of their option will in fact choose to exercise until there is a public market for the Company's common stock or another opportunity to sell or exchange the common stock for cash or marketable securities becomes generally available (such as an acquisition in which the acquiror pays cash for all outstanding shares).

Furthermore, prior to the time that a public market exists for the Company's common stock, the Company undertakes that it will not permit an optionholder who has exercised his or her option to complete a transfer without value of any common stock except upon the holder's death, by gift to a family member within the meaning of Rule 701, or pursuant to the terms of a domestic relations order and no further transfers are permitted. The Company confirms that it possesses the authority under the terms of the Plan and the agreements evidencing the options granted thereunder to limit the transfer without value of any common stock to those circumstances listed in the preceding sentence. Given these restrictions, the Company's common stock subject to options cannot be resold or otherwise transferred to the public.

Trading Interest

The second factor listed in Section 12(h) is the level of trading interest in a company's equity securities. The Plan has been structured to preclude trading of the options. The options granted or to be granted under the Plan are not transferable, other than by will or by the laws of descent and distribution in the event of an optionholder's death, pursuant to the terms of a domestic relations order, or on a limited basis for the benefit of family members and no further transfers are permitted. Transfers made in contravention to the Plan are deemed void thereunder. As a result, there will be no opportunity for any transfer of all or part of an option to take place prior to the occurrence of one of the events listed above, and these events are sufficiently infrequent and unpredictable in nature that no trading interest in the options as a class of equity security will be created as a result.

Nature of Issuer

The last factor mentioned in Section 12(h) is the nature and extent of the activities of the issuer and the income or assets of the issuer. All income and assets of the Company relate directly to its sales and operations.

The Company concedes that, if there were sufficient public ownership of and trading interest in its securities, consideration of the size or nature of the Company's business would not alone justify avoidance of the registration requirement of Section 12. However, because it has no public investors and no trading interest in its securities, the Company believes and it is our opinion that the purposes for which Section 12(g) was enacted would not be advanced by requiring the Company to register the options granted under the Plan.

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 11

Securities Exchange Act
of 1934 – Section 12(h)

Comparison to Relief Under Modified Set of Conditions

In the March 31, 2001 Quarterly Update to the Current Issues and Rulemaking Projects (“Quarterly Update”), the Commission staff announced that it has established a modified set of conditions for relief from those set forth in its prior no-action letters. The Company meets the Commission’s modified conditions for relief as noted below.

- *The options may be immediately exercisable.* As described in paragraph #4 above in the “BACKGROUND” section of this letter under the subheading “Summary of the Options,” options granted and to be granted under the Plan may become exercisable as soon as one year following the vesting commencement date, except for optionholders who may be permitted to exercise their option immediately pursuant to an early exercise right.
- *Former employees may retain their vested options.* As described in paragraph #8 above in the “BACKGROUND” section of this letter under the subheading “Summary of the Options,” under the Plan, former employees are permitted to retain their vested options, and may exercise the vested portion of any option until the earlier of the expiration of that option and a specified period following such employee’s termination, depending upon the reason for termination.
- *The options must remain non-transferable except in the event of death or disability of the optionholder.* As described in paragraph #11 above in the “BACKGROUND” section of this letter under the subheading “Summary of the Options,” under the Plan, options are not transferable, except by will or by the laws of descent and distribution, unless under the limited circumstances described below, and the options may be exercised during the lifetime of an optionholder only by the optionholder. The Company undertakes that it will not permit the transfer of options during the lifetime of the holder of an option by such holder other than by gift to family members as defined under Rule 701 or pursuant to a domestic relations order, and no transferee shall be permitted to make a subsequent transfer (except back to the transferor or to the Company), so long as the Company is relying on the relief granted in response to this request.
- *The stock received on exercise of the options may not be transferable, except back to the Company or in the event of death or disability.* Pursuant to the terms of the Plan, common stock issued upon exercise of the options may not be transferred prior to the 365th day following an initial public offering of the Company. Individuals who are permitted to exercise their options before they have fully vested may be subject to a repurchase option in favor of the Company. The Company undertakes that (i) it will not permit an optionholder who has exercised his or her option to complete a transfer for value of any shares of common stock except under the circumstances described above, and (ii) so long as it is relying on the no action relief granted pursuant to this request, it will repurchase all unvested shares upon termination of employment. Furthermore, the Company undertakes that it will not permit an

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 12

Securities Exchange Act
of 1934 – Section 12(h)

optionholder who has exercised his or her option to complete a transfer without value of any shares of common stock except upon the holder's death, by gift to a family member within the meaning of Rule 701, or pursuant to the terms of a domestic relations order, and no transferee shall be permitted to make a subsequent transfer (except back to the Company) so long as the Company is relying on the relief granted in response to this request. (See, e.g., Network General Central Corporation (May 22, 2006), ISE Labs, Inc. (June 2, 2003), Seagate Removable Storage Solutions Holdings (March 7, 2003), and Headstrong Corporations (February 28, 2003), in which the Staff granted no-action relief to issuers who permitted optionholders who had exercised their options to complete a transfer without value of any issuer shares by will or by the laws of descent and distribution, or a transfer to family members (as defined by Rule 701(c)(3)) who acquired such shares through gifts or domestic relations orders, as permitted within the parameters of Rule 701.) The Company confirms that it possesses the authority under the terms of the Plan and the agreements evidencing the options granted thereunder to limit both transfers for value and transfers without value of any common stock of the Company to the circumstances described in this paragraph.

- *Consultants may participate in the option plan if they would be able to participate under Rule 701.* As described above in the "BACKGROUND" section of this letter under the subheading "The Plan," the Company hereby confirms that any consultants who participate in the Plan are limited to those consultants who satisfy the definition of "consultants or advisors" set forth in Rule 701(c)(1).

Information Available to Optionholders and Shareholders

The Commission's modified position also is premised on both (1) optionholders and (2) holders of the Company's common stock who acquired their shares upon the exercise of an option granted under the Plan receiving materially equivalent Exchange Act registration statement, annual report and quarterly report information that they would have received had the Company registered the class of securities under Section 12, including audited financial statements and unaudited quarterly financial information, prepared in accordance with GAAP. So long as the Company is relying on the relief requested by this letter, the Company undertakes to deliver the following information:

- (a) The Company will deliver to holders of the Company's options and stock received on exercise of the options an information statement (the "Information Statement") which contains materially equivalent information as the Company would prepare for an Exchange Act registration statement on Form 10. The Information Statement will include among other things, the following: information concerning the Company's business, selected financial data, information with respect to the market price of and dividends on the Company's common stock and related stockholder matters, disclosures of recent sales of unregistered securities, properties information, security ownership of certain beneficial owners and management, directors and executive officer information (including compensation information), certain relationships and related transactions information,

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 13

Securities Exchange Act
of 1934 – Section 12(h)

legal proceedings information, a description of the Company's capital stock, a description of the indemnification of directors and officers, annual audited consolidated financial statements (prepared in accordance with GAAP), unaudited quarterly financial information (prepared in accordance with GAAP) through the period most recently available at the time the Information Statement is prepared, and information on changes in and disagreements with the accountants on accounting and financial disclosure.

- (b) After making the Information Statement available, the Company will subsequently deliver within 45 days after the end of each quarter (or such shorter period of time as required by the Commission for non-accelerated filers) to holders of the Company's options and common stock received on exercise of the options quarterly reports that contain materially equivalent information as the Company would prepare for an Exchange Act quarterly report on Form 10-Q. The quarterly reports will include, among other things, the following: unaudited quarterly financial statements prepared in accordance with GAAP, management's discussion and analysis of its financial condition and results of operations, quantitative and qualitative disclosures about market risk, legal proceedings information, disclosures of unregistered sales of securities and use of proceeds, information regarding the effectiveness of the Company's disclosure controls and procedures, information concerning any defaults upon senior securities and information concerning any matters submitted to a vote of security holders. This report will include a certification by the Company's Chief Executive Officer and Chief Financial Officer as required under the first three paragraphs of the certification required under Item 601(b)(31) of Regulation S-K.
- (c) After making the Information Statement available, the Company will also subsequently deliver within 90 days after the end of each fiscal year (or such shorter period of time as required by the Commission for non-accelerated filers) to holders of the Company's options and common stock received on exercise of the options annual reports that contain materially equivalent information as the Company would prepare for an Exchange Act annual report on Form 10-K. The annual reports will include, among other things, the following information: information concerning the Company's business; properties information; legal proceedings information; information concerning any matters submitted to a vote of security holders; information with respect to the market for the Company's common stock, related stockholder matters, and Company repurchases of securities; information regarding the effectiveness of the Company's disclosure controls and procedures; selected financial information; management's discussion and analysis of its financial condition and results of operations; quantitative and qualitative disclosures about market risk; annual audited consolidated financial statements prepared in accordance with GAAP; information concerning any changes in and disagreements with accountants on accounting and financial disclosure information; directors and executive officers information (including compensation information); security ownership of certain

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 14

Securities Exchange Act
of 1934 – Section 12(h)

beneficial owners and management; certain relationships and related transactions information; and disclosure of principal accounting fees and services. This report will include a certification by the Company's Chief Executive Officer and Chief Financial Officer as required under the first three paragraphs of the certification required under Item 601(b)(31) of Regulation S-K.

The Company undertakes to deliver free of charge, to holders of the Company's options and shares of common stock received on exercise of the options, copies of the quarterly reports and annual reports, on a continuing basis, so long as the holder agrees to keep such documents confidential. In the event a holder will not agree to keep such documents confidential, the Company undertakes to make the quarterly reports and annual reports available for inspection during normal business hours from the Finance Department at its corporate headquarters in Menlo Park, California.

So long as the Company is relying on the relief requested by this letter, the Company undertakes to deliver to optionholders under the Plan and its other equity holders an information statement in the form required under the proxy disclosure rules containing any information pertaining to a change in or amendment to the Plan that would otherwise require a shareholder vote.

So long as the Company is relying on the relief requested by this letter, the Company will make available to optionholders under the Plan the current vesting status of all options, and use reasonable efforts to otherwise provide such optionholder, so long as it receives reasonable notice of the optionholder's decision to terminate employment with the Company, with all material and relevant information that is necessary to the decision of whether to terminate employment and thereby forfeit the options.

So long as the Company is relying on the relief requested by this letter, the Company will make available to each optionholder under the Plan upon request access to the Company's books and records, including corporate governance documents, to the same extent it is obligated to make such books and records available to the Company's other securityholders.

So long as the Company is relying on the relief requested by this letter, the Company will make available to each optionholder under the Plan such other information as the Company may otherwise generally provide to its other securityholders.

The above information requirements will terminate once the Company or any of its subsidiaries to whose employees the Company has granted options becomes a reporting company under the Exchange Act when the Company or any of its subsidiaries to whose employees the Company has granted options would instead comply with the information requirements contained in the Exchange Act and the rules thereunder.

Division of Corporate Finance
Securities and Exchange Commission
October 31, 2006
Page 15

Securities Exchange Act
of 1934 – Section 12(h)

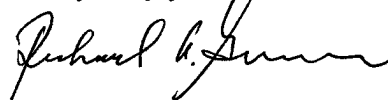
CONCLUSION

Because of the absence of public investors and trading interest in the Company's securities, the Company believes and it is our opinion that neither the public interest nor the protection of investors will be furthered by requiring the Company to be subject to the registration requirements of the Exchange Act on account of its granting options under the Plan pursuant to the terms of the Plan on the terms described in this letter.

We respectfully request an exemption pursuant to Section 12(h) of the Exchange Act from the registration requirements of Section 12(g) of the Exchange Act, or otherwise request that the Staff provide its assurance pursuant to a no-action letter that it will not recommend enforcement action to the Commission if the Company does not comply with the registration requirements of Section 12(g) of the Exchange Act with respect to options granted, and to be granted, to the Company's employees, directors, and consultants and the employees, directors, and consultants of the Company's subsidiaries under the Plan. We further request that the exemption or grant of no-action relief remain in effect until the earlier of (a) such time as the Company or any of its subsidiaries to whose employees the Company has granted options elects to become or in fact becomes a reporting company under the Exchange Act with respect to any class of the Company's securities, or (b) 120 days after the last day of the Company's fiscal year during which 500 or more persons become holders of any class of the Company's securities, other than options which have been granted under the Plan.

In accordance with Release No. 33-6269 (December 5, 1980), seven additional copies of this letter are enclosed. If for any reason the Division does not concur with our conclusions, we would appreciate the opportunity to confer with members of the Staff by telephone prior to any written response to this letter. If the Division needs any additional information regarding this letter, or if we may otherwise be of assistance, please telephone Richard A. Grimm at (650) 251-5285 or Jason R. Schendel at (650) 251-5049.

Very truly yours,



Richard A. Grimm

cc: VG Holding Corp.