

02-17-1999



100965957

2-12-99

**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

**TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).**

**Submission Type**

**New**

**Resubmission (Non-Recordation)**  
Document ID#

**Correction of PTO Error**  
Reel #  Frame #

**Corrective Document**  
Reel #  Frame #

**Conveyance Type**

**Assignment**       **Security Agreement**

**License**             **Change of Name**

**Merger**                 **Other**

**U.S. Government**  
(For Use ONLY by U.S. Government Agencies)

**Departmental File**       **Secret File**

**Conveying Party(ies)**

**Mark if additional names of conveying parties attached**

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

**Second Party**

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

**Receiving Party**

**Mark if additional names of receiving parties attached**

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

**If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)**

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

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**FOR OFFICE USE ONLY**

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**Correspondent Name and Address**      **Area Code and Telephone Number**

**Name**

**Address (line 1)**

**Address (line 2)**

**Address (line 3)**

**Address (line 4)**

**Pages**      **Enter the total number of pages of the attached conveyance document including any attachments.**      #

**Application Number(s) or Patent Number(s)**       **Mark if additional numbers attached**

*Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).*

Patent Application Number(s)			Patent Number(s)		
<input type="text" value="09139020"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="09153143"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="09038158"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.                 

**Patent Cooperation Treaty (PCT)**

Enter PCT application number  PCT  PCT

only if a U.S. Application Number  PCT  PCT  has not been assigned.

**Number of Properties**      **Enter the total number of properties involved.**      #

**Fee Amount**      **Fee Amount for Properties Listed (37 CFR 3.41):** \$

**Method of Payment:**      Enclosed       Deposit Account

**Deposit Account**      (Enter for payment by deposit account or if additional fees can be charged to the account.)

**Deposit Account Number:**      #

**Authorization to charge additional fees:**      Yes       No

**Statement and Signature**

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.*

Kendal H. Tyre, Esquire      *Kendal Tyre*      2/12/99

**Name of Person Signing**      **Signature**      **Date**

**RECORDATION FORM COVER SHEET  
CONTINUATION  
PATENTS ONLY**

**Conveying Party(ies)**

Mark if additional names of conveying parties attached

Enter additional Conveying Parties

Name (line 1)

Execution Date  
Month Day Year

Name (line 2)

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

Execution Date  
Month Day Year

Name (line 1)

Name (line 2)

**Receiving Party(ies)**

Mark if additional names of receiving parties attached

Enter additional Receiving Party(ies)

Name (line 1)

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

Name (line 1)

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

**Application Number(s) or Patent Number(s)**

Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

**Patent Application Number(s)**

**Patent Number(s)**

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**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES LAWS. THIS NOTE HAS BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE SOLD, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT COMPLIANCE WITH THE REGISTRATION OR QUALIFICATION PROVISIONS OF APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR APPLICABLE EXEMPTIONS THEREFROM. THE ISSUER OF THIS NOTE MAY REQUIRE AN OPINION OF COUNSEL IN FORM OR SUBSTANCE SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH SUCH ACT OR STATE SECURITIES LAWS.**

**THE SECURITIES REPRESENTED BY THIS NOTE, INCLUDING ANY COMMON UNITS ISSUABLE UPON THE CONVERSION HEREOF, ARE SUBJECT TO THAT CERTAIN MULTI-PARTY AGREEMENT DATED AS OF NOVEMBER 12, 1998. THE SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO THE TERMS AND CONDITIONS OF THE MULTI-PARTY AGREEMENT. A COPY OF THE MULTI-PARTY AGREEMENT IS ON FILE AT THE OFFICE OF THE SECRETARY OF THE COMPANY.**

**FOLIOTRADE LLC**

**SENIOR SECURED SUBORDINATED CONVERTIBLE NOTE DUE 2004**

**\$4,000,000**

**November 12, 1998**

For value received, **FolioTrade LLC**, a Delaware limited liability company (the "Company"), hereby promises to pay to **PSINet Inc.**, a New York corporation ("PSI"), or registered assigns (PSI and any such registered assigns are sometimes hereinafter individually referred to as a "holder" of the Note) the principal sum of Four Million Dollars (\$4,000,000) or such part thereof as then remains unpaid, to pay interest from the date hereof on the whole amount of said principal sum remaining from time to time unpaid at the rate of ten percent (10%) per annum, compounded annually, until the whole amount of the principal hereof remaining unpaid shall become due and payable.

1. Payment Terms; Note as Debt. (a) Principal and interest on the Note shall be payable in three installments, as follows: (i) \$1,333,333 of principal and one-third (1/3) of the interest then accrued and unpaid shall be payable on November 12, 2002; (ii) \$1,333,333 of principal and one-half (1/2) of the interest then accrued and unpaid shall be payable on November 12, 2003; and (iii) \$1,333,334 of principal and all remaining interest then accrued and unpaid shall be payable on November 12, 2004 (the foregoing

dates being sometimes individually referred to herein as a "Payment Date" and collectively as the "Payment Dates"). Principal, premium, if any, and interest shall be payable in lawful money of the United States of America, in immediately available funds, at the principal office of PSI or at such other place as the legal holder may designate from time to time in writing to the Company. Interest shall be computed on the basis of a 365-day year. This Note may be prepaid in whole or in increments of at least \$1,000,000 (consisting of principal together with accrued interest thereon) or such lesser amount as would then retire the Note held by the holder, at any time or from time to time upon at least 90 days' and no more than 150 days' written notice to the holder of the Note, without premium or penalty, except to the extent, if at all, that the Note has been converted into Common Units of the Company in accordance with the provisions of Section 4 below. The Company may specify in connection with its prepayment the installment to which the prepayment shall be applied, and if no such specification is made, any prepayments will be applied in order of maturity with prepayments applied to any amounts coming due first. The Company, PSI and any successor holder of the Note each hereby agrees to treat the Note as debt for all Federal and state income tax purposes, except to the extent, if at all, that the Note has been converted in accordance with the provisions of Section 4 below.

(b) The rate of interest on this Note shall be the lesser of (i) the rate provided above and (ii) the maximum rate permitted by applicable law. It is the intention of the Company, PSI and any successor holder of the Note to comply with all applicable usury laws, whether now existing or hereafter enacted.

## 2. Security Interest and Subordination.

### 2.1 Security Interest.

(a) Definitions. As used herein, "Collateral" shall mean all property wherever located, real, personal and mixed, tangible and intangible, now owned or hereafter acquired by the Company, or its successors or assigns, or in which the Company, or its successors or assigns, now or hereafter has an interest, and all proceeds of any of the foregoing, including without limitation all (A) inventory, including, without limitation all supplies, raw materials, work in process, finished goods and merchandise; (B) accounts, contract rights, instruments, chattel paper, documents and general intangibles, including without limitation all good will, records, computer programs and rights in premises used in the conduct of the Company's business; (C) equipment, including without limitation all vehicles, machinery tools, furniture, fixtures and parts; and (D) trade secrets, technical information, data, techniques, discoveries, inventions, processes, know-how, patents (including any extension, reissue or renewal thereof) and patent applications, trademarks, copyrights and logos.

(b) Grant of Security Interest. As security for the full, prompt and complete payment and performance of the Note and all indebtedness thereunder, the Company hereby grants to PSI a security interest under the Uniform Commercial Code of

the State of Virginia, as amended, and under any other applicable law (including, without limitation, the Uniform Commercial Code of any state in which the Collateral is located), in and to the Collateral (the "PSI Security Interest").

(c) Rights to Take Action as Secured Party Upon Event of Default. Upon the occurrence of an Event of Default (as defined below) of the Note, PSI shall have the rights and remedies and full power and authority (i) to take action as a secured party under the applicable Uniform Commercial Code as then in effect with respect to the Collateral; (ii) to sell, license or otherwise dispose of the Collateral or any part thereof; (iii) to offset any indebtedness then owed by PSI to the Company, whether or not then due, against any indebtedness then owed to PSI under the Note, whether or not then due; and/or (iv) to exercise or enforce any and all other rights or remedies available by law or agreement, against the Collateral or the Company. In addition to or in conjunction with the rights and remedies referred to herein, upon the occurrence and during the continuation of an Event of Default:

(i) Written notice mailed to the Company at the address designated as provided herein fifteen (15) days or more prior to the date of any sale or other disposition of the Collateral for which notice is required shall constitute reasonable notice.

(ii) PSI may require the Company to assemble any of the Collateral and to make it available to PSI at a place reasonably convenient to PSI and the Company.

(iii) PSI may require the Company to use its best efforts to obtain any approvals that are required in order to permit the sale of the Collateral pursuant to this Agreement and, to the extent reasonable and feasible, allow the purchaser of the Collateral to continue the Company's business.

(d) UCC Financing Statements. The Company agrees to execute and deliver UCC Financing Statements naming PSI as Secured Party, to be filed in such jurisdictions as counsel for PSI may reasonably request. The Company hereby agrees upon written request to use its best efforts to do any and all other acts and things which PSI may reasonably deem necessary to perfect and to continue to be perfected the PSI Security Interest, including without limitation the execution of any continuation statement prepared by counsel for PSI with respect to such security interest.

(e) Exceptions for Senior Debt and Pari-Passu Debt. Notwithstanding anything to the contrary contained in the foregoing provisions of this Section 2.1 or elsewhere in this Note, PSI hereby covenants and agrees that it will do any and all acts and things reasonably necessary to enable the Company: (i)(x) to incur Senior Lender Debt (as defined below), and (y) to grant purchase money security interests ("PMSIs") and enter into equipment financings in the nature of PMSIs as approved by the Board of Directors of the Company (such Senior Lender Debt, PMSIs and PMSI-like equipment financings being sometimes collectively referred to herein as "Senior Debt"), all of which Senior Debt shall have a prior security interest to the PSI Security Interest (in the case of PMSIs and PMSI-like equipment financings, such prior security interest to be limited to

the lien on the specific equipment or other assets securing the obligation), and (ii) to incur up to \$2.5 million of other debt (the "Pari Passu Debt") which shall be pari passu with the Note and the indebtedness thereunder, provided that such Pari Passu Debt shall be (x) approved by the Board of the Directors and (y) with a creditor reasonably acceptable to PSI and which enters into an intercreditor agreement reasonably acceptable to PSI. Without limiting the foregoing, PSI agrees that it will execute and file all documents and instruments necessary to give effect to the foregoing provisions of this Section 2.1(e), including, without limitation, UCC Financing Statements, Subordination Agreement(s), and Intercreditor Agreement(s), all in form and substance reasonably acceptable to the Company.

**2.2 Subordination.** The Company, for itself, its successors and assigns, covenants and agrees, and PSI and each successor holder of the Note by his or its acceptance thereof, likewise covenants and agrees, that notwithstanding any other provision of this Note, the payment of the principal of and interest on the Note shall be subordinated in right of payment, to the extent and in the manner hereinafter set forth, to the prior payment in full of all Senior Lender Debt at any time outstanding. The provisions of this Section 2.2 shall constitute a continuing representation to all Persons (as defined below) who, in reliance upon such provisions, become the holders of or continue to hold Senior Lender Debt, and such provisions are made for the benefit of the holders of Senior Lender Debt, and such holders are hereby made obligees hereunder the same as if their names were written herein as such, and they or any of them may proceed to enforce such provisions against the Company or against the holder of the Note without the necessity of joining the Company as a party.

**(a) Payment of Senior Lender Debt.** In the event of any insolvency or bankruptcy proceedings, or any receivership, liquidation, reorganization or other similar proceedings in connection therewith, relative to the Company or to its property, or, in the event of any proceedings for voluntary liquidation, dissolution or other winding up of the Company or distribution or marshaling of its assets or any composition with creditors of the Company, whether or not involving insolvency or bankruptcy, then and in any such event all Senior Lender Debt shall be paid in full before any payment or distribution of any character, whether in cash, securities or other property, shall be made on account of the Note; and any such payment or distribution, except securities which are subordinated and junior in right of payment to the payment of all Senior Lender Debt then outstanding in terms of substantially the same tenor as this Section 2.2, which would, but for the provisions hereof, be payable or deliverable in respect of the Note shall be paid or delivered directly to the holders of Senior Lender Debt (or their duly authorized representatives), in the proportions in which they hold the same, until all Senior Lender Debt shall have been paid in full, and every holder of the Note by becoming a holder thereof shall have designated and appointed the holder or holders of Senior Lender Debt (and their duly authorized representatives) as his or its agents and attorney-in-fact to demand, sue for, collect and receive such Senior Lender Debt holder's ratable share of all such payments and distributions and to file any necessary proof of claim therefor and to take all such other action in the name of the holders of the Note or otherwise, as such

Senior Lender Debt holders (or their authorized representatives) may determine to be necessary or appropriate for the enforcement of this Section 2.2. PSI and each successor holder of the Note by its or his acceptance thereof agrees to execute, at the request of the Company, a separate agreement with any holder of Senior Lender Debt on the terms set forth in this Section 2.2, and to take all such other action as such holder or such holder's representative may request in order to enable such holder to enforce all claims upon or in respect of such holder's ratable share of the Note.

(b) No Payment on Note Under Certain Conditions. In the event that any default occurs in the payment of the principal of or interest on any Senior Lender Debt (whether as a result of the acceleration thereof by the holders of such Senior Lender Debt or otherwise) and during the continuance of such default for a period up to one hundred twenty (120) days and thereafter if judicial proceedings shall have been instituted with respect to such defaulted payment, or (if a shorter period) until such payment has been made or such default has been cured or waived in writing by such holder of Senior Lender Debt then and during the continuance of such event no payment of principal or interest on the Note shall be made by the Company or accepted by any holder of the Note who has received notice from the Company or from a holder of Senior Lender Debt of such events.

(c) Payments Held in Trust. In case any payment or distribution shall be paid or delivered to any holder of the Note before all Senior Lender Debt shall have been paid in full, despite or in violation or contravention of the terms of this subordination, such payment or distribution shall be held in trust for and paid and delivered ratably to the holders of Senior Lender Debt (or their duly authorized representatives), until all Senior Lender Debt shall have been paid in full.

(d) Subrogation. Subject to the payment in full of all Senior Lender Debt and until the Note shall be paid in full, the holders of the Note shall be subrogated to the rights of the holders of Senior Lender Debt (to the extent of payments or distributions previously made to such holders of Senior Lender Debt pursuant to the provisions of subsections (a) and (c) of this Section 2.2) to receive payments or distributions of assets of the Company applicable to the Senior Lender Debt. No such payments or distributions applicable to the Senior Lender Debt shall, as between the Company and its creditors, other than the holders of Senior Lender Debt and the holders of the Note, be deemed to be a payment by the Company to or on account of the Note; and for the purposes of such subrogation, no payments or distributions to the holders of Senior Lender Debt to which the holders of the Note would be entitled except for the provisions of this Section 2.2 shall, as between the Company and its creditors, other than the holders of Senior Lender Debt and the holders of the Note, be deemed to be a payment by the Company to or on account of the Senior Lender Debt.

(e) Scope of Section. The provisions of this Section 2.2 are intended solely for the purpose of defining the relative rights of the holders of the Note, on the one hand, and the holders of the Senior Lender Debt, on the other hand. Nothing contained in



this Section 2.2 or elsewhere in this Note is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Lender Debt, and the holders of the Note, the obligation of the Company, which is unconditional and absolute, to pay to the holders of the Note the principal of and interest on the Note as and when the same shall become due and payable in accordance with the terms thereof, or to affect the relative rights of the holders of the Note and creditors of the Company other than the holders of the Senior Lender Debt, nor shall anything herein or therein prevent the holder of the Note from accepting any payment with respect to such Note or exercising all remedies otherwise permitted by applicable law upon default under such Note, subject to the rights, if any, under this Section 2.2 of the holders of Senior Lender Debt in respect of cash, property or securities of the Company received by the holders of the Note.

(f) Survival of Rights. The right of any present or future holder of Senior Lender Debt to enforce subordination of the Note pursuant to the provisions of this Section 2.2 shall not at any time be prejudiced or impaired by any act or failure to act on the part of the Company or any such holder of Senior Lender Debt, including, without limitation, any forbearance, waiver, consent, compromise, amendment, extension, renewal, or taking or release of security of or in respect of any Senior Lender Debt or by noncompliance by the Company with the terms of such subordination regardless of any knowledge thereof such holder may have or otherwise be charged with.

(g) Amendment or Waiver. The provisions of this Section 2.2 may not be amended or waived in any manner which is detrimental to any Senior Lender Debt without the consent of the holders of all then existing Senior Lender Debt.

(h) Senior Lender Debt Defined. The term "Senior Lender Debt" shall mean (i) all debt financings of up to \$1.5mm from bona fide third party lenders (which shall not be affiliated with the Company or Steven M.H. Wallman) for value, including for working capital and other debt as approved by the Board of Directors of the Company, including any extension, replacement or renewals thereof, whether outstanding on the date hereof or thereafter created or incurred, which are not by their terms subordinate and junior to or on a parity with the Note, and (ii) all guaranties by the Company which are not by their terms subordinate and junior to or on a parity with the Note, of obligations of any Subsidiary if such obligations would have been Senior Lender Debt pursuant to the provisions of clause (i) of this sentence had they been obligations of the Company.

### 3. Events of Default.

3.1 Events of Default for the Benefit of all Holders of the Note. If any of the following events (together with the event referred to in Section 3.2, "Events of Default") shall occur and be continuing:

(a) The Company shall fail to pay any installment of principal of the Note when due; or

(b) The Company shall fail to pay any interest or premium on the Note when due and such failure shall continue for five (5) Business Days (as defined below); or

(c) The Company shall fail to perform or observe any other term, covenant or agreement contained in this Note on its part to be performed or observed and any such failure remains unremedied for ten (10) Business Days after written notice thereof shall have been given to the Company by any registered holder of the Note; or

(d) The Company shall be involved in financial difficulties as evidenced (i) by its admitting in writing its inability to pay its debts generally as they become due; (ii) by its commencement of a voluntary case under Title 11 of the United States Code as from time to time in effect, or by its authorizing, by appropriate proceedings of its Board of Directors or other governing body, the commencement of such a voluntary case; (iii) by its filing an answer or other pleading admitting or failing to deny the material allegations of a petition filed against it commencing an involuntary case under said Title 11, or seeking, consenting to or acquiescing in the relief therein provided, or by its failing to controvert timely the material allegations of any such petition; (iv) by the entry of an order for relief in any involuntary case commenced under said Title 11; (v) by its seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction relating to the liquidation or reorganization of debtors or to the modification or alteration of the rights of creditors, or by its consenting to or acquiescing in such relief; (vi) by the entry of an order by a court of competent jurisdiction (a) finding it to be bankrupt or insolvent, (b) ordering or approving its liquidation, reorganization or any modification or alteration of the rights of its creditors, or (c) assuming custody of, or appointing a receiver or other custodian for, all or a substantial part of its property; or (vii) by its making an assignment for the benefit of, or entering into a composition with, its creditors, or appointing or consenting to the appointment of a receiver or other custodian for all or a substantial part of its property; or

(e) Any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of the Company and such judgment, writ, or similar process shall not be released, vacated or fully bonded within (60) days after its issue or levy; or

(f) The Company shall fail to pay any Senior Debt or other indebtedness that is pari passu with this Note owing by the Company, or any interest or premium thereon, when due (or, if permitted by the terms of the relevant document, within any applicable grace period), whether such Senior Debt or other pari passu indebtedness shall become due by scheduled maturity, by required prepayment, by acceleration, by demand or otherwise; or

(g) As of the initial issuance of the Note: (i) the Note is not duly executed and delivered by the Company; or (ii) the Note is not a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as

enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally and by general principles of equity;

then, and in any such event:

(1) PSI or any other registered holder of this Note may, by written notice to the Company, declare the entire unpaid principal amount of the Note, all interest accrued and unpaid thereon and all other amounts payable under this Note to be forthwith due and payable, whereupon the Note, all such accrued interest and all such amounts shall become and be forthwith due and payable (unless there shall have occurred an Event of Default under subsection 3.1(d) in which case all such amounts shall automatically become due and payable), without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company; and

(2) PSI or any other registered holder of this Note may proceed to protect and enforce its rights by suit in equity (including without limitation a suit for rescission), action at law and/or other appropriate proceeding either for specific performance of any covenant, provision or condition contained or incorporated by reference in this Note, or in aid of the exercise of any power granted in this Note.

3.2. Event of Default For the Benefit of PSI Only. For so long as PSI continues to hold this Note, if any of the following events shall occur and be continuing:

(a) Commencing upon the 90th day after Steven M.H. Wallman ("Mr. Wallman") voluntarily terminates his employment with the Company pursuant to Section 4(a) of Mr. Wallman's Employment Agreement with the Company dated as of the date of the initial issuance of this Note, provided that PSI determines, as declared in a writing provided contemporaneously to Mr. Wallman, that, in PSI's reasonable judgment: (x) Mr. Wallman's departure from the Company is likely to have a material adverse effect on the Company, and (y) PSI's best remedy in such event is to require the accelerated repayment in full of the Note outstanding to PSI; or

(b) The Company shall breach any material term, covenant, agreement, representation or warranty contained in the Multi-Party Agreement, dated as of the date of initial issuance of this Note among the Company, PSI and certain unitholders of the Company listed therein, on its part to be performed or observed, and any such breach remains unremedied for ten (10) Business Days after written notice thereof shall have been given to the Company by PSI; or

(c) The Company shall breach any material term, covenant, agreement, representation or warranty contained in that certain Warrant, issued to PSI and dated as of the date of initial issuance of this Note, on its part to be performed or observed, and any such failure remains unremedied for ten (10) Business Days after written notice thereof shall have been given to the Company by PSI; or

(d) The Company shall: (i) be engaged principally in a business other than an Internet-based financial services business and continues to be so engaged for thirty (30) days after written notice thereof shall have been given to the Company by PSI; (ii) fail to have a prototype of its financial services system by August 31, 1999 or a working model of its financial services system by December 31, 1999; (iii) provided that it was able to obtain at least \$4,000,000 in additional capital for the purpose of marketing and advertising by December 31, 1999, fail to have at least 40,000 to 60,000 subscribers by December 31, 2000; or (iv) provided that it was able to obtain at least \$10,000,000 in additional capital for general working capital purposes (in addition to the \$4,000,000 in marketing and advertising described in (iii) above), fail to have at least 240,000 to 270,000 subscribers by December 31, 2002; provided that, in the case where at least \$4,000,000 or \$10,000,000 of additional capital is not obtained as described above, then the Company and PSI shall negotiate in good faith to establish reasonable goals analogous to those established above in light of the additional capital that is raised; and provided further that, in each such case under (ii)-(iv) above, the Company shall have an additional 180 days after receiving notice of such failure from PSI to (i) cure such failure by satisfying the action or (ii) obtain a waiver of the condition from PSI after providing a full explanation to PSI as to management's belief concerning the cause of the failure and the reasons why a waiver should be provided; provided, however, that PSI shall have, in its absolute discretion, the right to refuse to grant a waiver after receiving such notice;

then, in any such event, PSI may:

(1) by written notice to the Company, declare the entire unpaid principal amount of the Note outstanding to PSI, all interest accrued and unpaid thereon and all other amounts payable under this Note to PSI to be forthwith due and payable, whereupon all such principal amount outstanding to PSI, all such accrued interest and all such other amounts shall become and be forthwith due and payable to PSI, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company; and

(2) proceed to protect and enforce its rights by suit in equity (including without limitation a suit for rescission), action at law and/or other appropriate proceeding either for specific performance of any covenant, provision or condition contained or incorporated by reference in this Note, or in aid of the exercise of any power granted in this Note.

#### 4. Conversion of Note.

4.1. Conversion Right. Subject to and in compliance with the provisions of this Section 4, the holder of this Note may convert the Note, at any time and from time to time, in increments of at least \$1,000,000 of outstanding principal (or such lesser amount as is then outstanding), together with all accrued and unpaid interest allocable to such principal amount to the extent provided below, into Common Units, or, in the event the Company is converted from an LLC to a corporation as provided below, then from and

after such conversion of the Company into a corporation, into the number of shares of Common Stock representing the same percentage interest of the Company as would have been represented by the Common Units issued upon conversion of the Note if such conversion had occurred when the Company was still an LLC. The holder of the Note hereby acknowledges and agrees that the Company may be converted from an LLC to a corporation at any time that the Board of Directors of the Company deems it necessary, appropriate or convenient to do so, including, without limitation, prior to or in connection with a proposed private investment in the Company by a third party or a proposed initial public offering of Company securities, in which event, effective upon the conversion of the Company to a corporation, all references in this Note to "Common Units" issuable upon conversion of the Note shall be deemed to refer to the number of shares of Common Stock representing the same percentage interest of the Company as would have been represented by the Common Units issued upon conversion of the Note if the conversion had occurred when the Company was still an LLC.

4.2. Applicable Conversion Value. The price at which the Note may be converted into Common Units (the "Applicable Conversion Value") shall, subject to adjustment as hereinafter provided, be Fifty Cents (\$.50) in principal amount of the Note for each Common Unit. The accrued and unpaid interest allocable to the converted principal amount of the Note shall be converted with such principal as additional consideration for the purchase of the same number of Common Units as would have been purchased if only such principal amount had been converted; accordingly, no additional Common Units shall be issued as a result of the conversion of accrued and unpaid interest and no adjustment shall be made to the Applicable Conversion Value, number of Common Units issuable upon conversion of the Note, or otherwise, as a result of the conversion of such accrued and unpaid interest.

4.3. Unit Dividends, Subdivisions and Combinations. In case after the date hereof at any time or from time to time the Company shall:

(a) Take a record of the holders of its Common Units for the purpose of entitling them to receive a dividend payable in, or other distribution of, Common Units; or

(b) Subdivide its outstanding Common Units into a larger number of Common Units; or

(c) Combine its outstanding Common Units into a smaller number of Common Units,

then the Applicable Conversion Value shall be adjusted to that price determined by multiplying the then Applicable Conversion Value in effect immediately prior to such event by a fraction (i) the numerator of which shall be the total number of outstanding Common Units of the Company immediately prior to such event on a fully-diluted basis (the "Outstanding Common Units;" including, for purposes of calculating the number of Outstanding Common Units, all issued and outstanding Common Units and all Common

Units issuable upon (x) exercise of outstanding options, warrants or other rights to purchase or subscribe for Common Units or other securities of the Company, or (y) conversion or exchange of any other securities which by their terms are convertible into or exchangeable for Common Units or other securities of the Company; including, without limitation, Common Units issuable upon conversion of this Note and Common Units issuable upon exercise of the Warrant issued to PSI as of the initial date of issue of this Note, and (ii) the denominator of which shall be the total number of Outstanding Common Units of the Company immediately after such event.

4.4. Issuance of Additional Common Units. If the Company shall, while the Note is outstanding, issue or sell any Common Units without consideration or at a price per Common Unit less than the Applicable Conversion Value in effect immediately prior to such issuance or sale ("Additional Common Units"), then in each such case the Applicable Conversion Value, upon each such issuance or sale, except as hereinafter provided, shall be lowered to that price determined by multiplying the Applicable Conversion Value in effect immediately prior to such event by a fraction:

(a) the numerator of which shall be (i) the number of Outstanding Common Units immediately prior to the issuance of such Additional Common Units, plus (ii) the number of Common Units which the aggregate consideration, if any, received by the Company for the total number of such Additional Common Units so issued would purchase at the Applicable Conversion Value in effect immediately prior to such issuance; and

(b) the denominator of which shall be (i) the number of Outstanding Common Units immediately prior to the issuance of such Additional Common Units plus (ii) the number of such Additional Common Units so issued;

provided, however, that no adjustment shall be made to the Applicable Conversion Value for issuances of up to 8,000,000 Additional Common Units (as adjusted for unit splits, unit dividends, and similar recapitalizations affecting such units) issued (or issuable under options, purchase rights, convertible securities and the like) to directors, officers, employees, outside consultants and other service providers as compensation for services rendered or to be rendered to the Company where such issuance (whether pursuant to a plan or otherwise) has been approved by the Board of Directors of the Company.

4.5. Adjustments Upon Issuance of Common Units, Warrants, Options and Rights to Common Units.

(a) For the purposes of this Section 4, the issuance of any Common Units or any warrants, options, subscriptions or purchase rights with respect to Common Units and the issuance of any securities convertible into or exchangeable for Common Units (or the issuance of any warrants, options or any rights with respect to such convertible or exchangeable securities) shall be deemed an issuance at such time of such

Common Units if the Net Consideration Per Unit (as hereinafter determined) which may be received by the Company for such Common Units shall be less than the Applicable Conversion Value at the time of such issuance. Any obligation, agreement or undertaking to issue Common Units or warrants, options, subscriptions or purchase rights at any time in the future shall be deemed to be an issuance at the time such obligation, agreement or undertaking is made or arises. No adjustment of the Applicable Conversion Value shall be made under this Section 4 upon the issuance of any Common Units which are issued pursuant to the exercise of any warrants, options, subscriptions or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if any adjustment shall previously have been made upon the issuance of any such warrants, options or subscriptions or purchase rights or upon the issuance of any convertible securities (or upon the issuance of any warrants, options or any rights therefor) as above provided.

Should the Net Consideration Per Unit of any such warrants, options, subscriptions or purchase rights or convertible securities be decreased from time to time, then, upon the effectiveness of each such change, the Applicable Conversion Value shall be adjusted to such Applicable Conversion Value as would have obtained (1) had the adjustments made upon the issuance of such warrants, options, rights or convertible securities been made upon the basis of the actual Net Consideration Per Unit of such securities, and (2) had adjustments made to the Applicable Conversion Value since the date of issuance of such securities been made to the Applicable Conversion Value as adjusted pursuant to (1) above. Any adjustment of the Applicable Conversion Value with respect to this paragraph which relates to warrants, options, subscriptions or purchase rights with respect to Common Units shall be disregarded if, as, and when all of such warrants, options, subscriptions or purchase rights expire or are canceled without being exercised, so that the Applicable Conversion Value effective immediately upon such cancellation or expiration shall be equal to the Applicable Conversion Value in effect at the time of the issuance of the expired or canceled warrants, options, subscriptions or purchase rights, with such additional adjustments as would have been made to that Applicable Conversion Value had the expired or canceled warrants, options, subscriptions or purchase rights not been issued.

(b) For purposes of this Section 4, the "Net Consideration Per Unit" which may be received by the Company shall be determined as follows:

(i) The "Net Consideration Per Unit" shall mean the amount equal to the total amount of consideration, if any, received by the Company for the issuance of such Common Units, warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities, plus the minimum amount of consideration, if any, payable to the Company upon exercise or conversion thereof, divided by the aggregate number of Common Units that would be issued if all such Common Units, warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities were exercised, exchanged or converted.

(ii) The Net Consideration Per Unit which may be received by the Company shall be determined in each instance as of the date of issuance of Common Units, warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities without giving effect to any possible future upward price adjustments or rate adjustments which may be applicable with respect to such Common Units, warrants, options, subscriptions or other purchase rights or convertible or exchangeable securities.

(c) For purposes of this Section 4, if a part or all of the consideration received by the Company in connection with the issuance of Common Units or the issuance of any of the securities described in this Section 4 consists of property (but not services) other than cash, such consideration shall be deemed to have a fair market value as is reasonably determined in good faith by the Board of Directors of the Company.

4.6 Adjustment for Dividends in Other Units, Property, etc.; Reclassification, etc. In case at any time or from time to time, the holders of Common Units shall have received, or (on or after the record date fixed for the determination of unitholders eligible to receive) shall have become entitled to receive, without payment therefor:

(a) other or additional units or other securities or property (other than cash) by way of dividend, or

(b) any cash (excluding cash dividends or distributions to members payable solely out of earnings or earned surplus or profits or income of the Company, including without limitation cash payable to members as distributions of profits or income to the extent reasonably necessary to pay federal, state or other taxes arising in connection with the ownership of Common Units previous to the date of the distribution), or

(c) other or additional units or other securities or property (including cash) by way of spin-off, split-up, reclassification, recapitalization, combination of units or similar corporate rearrangement,

other than additional Common Units issued as a unit dividend or in a unit split (adjustments in respect of which are provided for in Section 4.3), then and in each such case each holder of this Note, on the conversion thereof as provided in this Section 4, shall be entitled to receive the amount of units and other securities and property (including cash in the cases referred to in paragraphs (b) and (c) of this Section 4.6) which such holder would hold on the date of such conversion if on the date hereof he had been the holder of record of the number of Common Units issuable upon conversion of this Note and had thereafter, during the period from the date hereof to and including the date of such conversion, retained such units and all such other or additional other securities and property (including cash in the cases referred to in paragraphs (b) and (c) of



this Section 4.6) receivable by him as aforesaid during such period, giving effect to all adjustments called for during such period under this Section 4.

4.7. Adjustment of Number of Common Units Purchasable. Upon each adjustment of the Applicable Conversion Value, the number of Common Units issuable upon conversion of the Note shall be adjusted by dividing the applicable aggregate outstanding principal amount of the Note by the Applicable Conversion Value in effect immediately following such adjustment.

4.8. Minimum Adjustment. Except as hereinafter provided, no adjustment of the Applicable Conversion Value hereunder shall be made if such adjustment results in a change of the Applicable Conversion Value then in effect of less than 1.00%. Any adjustment of less than 1.00% shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, together with the adjustment or adjustments so carried forward, amounts to 1.00% or more of the Applicable Conversion Value then in effect. However, upon the conversion of the Note, the Company shall make all necessary adjustments not theretofore made to the Applicable Conversion Value up to and including the date upon which such Note is converted.

4.9. Notice of Adjustments. Whenever the Applicable Conversion Value shall be adjusted pursuant to this Section 4, the Company shall promptly prepare a certificate signed by the President or chief financial officer of the Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated (including a description of the basis on which the Board of Directors of the Company made any determination hereunder), and shall promptly cause copies of such certificate to be mailed (by first class mail, postage prepaid) to all holders of the Note.

4.10. Adjustments for Reorganizations, Mergers, Consolidations, Sales, Dissolutions, etc.

(a) In the case of any consolidation or merger of the Company with another entity, or the sale of all or substantially all of its assets to another entity, or any reorganization or reclassification of the Common Units or other equity securities of the Company (except a split-up or combination for which provision is made in Section 4.3), then, as a condition of such consolidation, merger, sale, reorganization or reclassification, lawful and adequate provision shall be made whereby the holders of the Note shall thereafter have the right to receive upon the basis and upon the terms and conditions specified herein and in lieu of the Common Units immediately theretofore issuable upon conversion of this Note, such units, other securities or assets as may (by virtue of such consolidation, merger, sale, reorganization or reclassification) be issued or payable with respect to or in exchange for a number of outstanding Common Units equal to the number of Common Units immediately theretofore so issuable upon conversion of the Note had such consolidation, merger, sale, reorganization or reclassification not taken place, and in any such case appropriate provisions shall be made with respect to the rights and interest

of the holders of the Note to the end that the provisions hereof (including, without limitation, provisions for adjustment of the Applicable Conversion Value) shall thereafter be applicable, as nearly as may be, in relating to any units, other securities or assets thereafter deliverable upon conversion of the Note.

(b) Dissolution or Liquidation. In the event of any proposed distribution of the assets of the Company in dissolution or liquidation except under circumstances when the foregoing clause (a) of this Section shall be applicable, the Company shall mail notice thereof to all holders of the Note and shall make no distribution to unitholders until the expiration of thirty (30) days from the date of mailing of the aforesaid notice and, in any such case, each holder of the Note may exercise the conversion rights with respect to the Note held by it within thirty (30) days from the date of mailing such notice and all conversion rights herein granted not so exercised within such thirty (30) day period shall thereafter become null and void.

4.11. Cash in Lieu of Fractional Common Units. No fractional Common Units shall be issued upon the conversion of this Note. Instead of any fractional Common Units which would otherwise be issuable upon conversion of a Note, the Company shall pay to the holder of the Note which was converted a cash adjustment in respect of such fractional Common Unit in an amount equal to the same fraction of the market price per Common Unit (as determined in a reasonable manner prescribed by the Board of Directors) at the close of business on the Conversion Date (as defined below).

4.12. Partial Conversion. In the event some but not all of the principal amount represented by this Note is converted, the Company shall execute and deliver to or on the order of the holder, at the expense of the Company, a new Note representing the principal amount which was not converted.

4.13. Exercise of Conversion Rights.

(a) Subject to the applicable terms of conversion contained in this Section 4, a holder of this Note shall have until 30 days prior to any Interest Payment Date, or, in the case of any prepayment by the Company, the 90<sup>th</sup> day after receiving notice from the Company of such intended prepayment (each, a "Conversion Notice Date"), to notify the Company in writing (the "Conversion Notice") of its election to convert the Note in accordance with the provisions of this Section 4 as to all or any portion of the Note. The Conversion Notice shall state the date (the "Conversion Date") on which the conversion is to take place, which, in the case of a scheduled Interest Payment Date, shall be no later than the fifth Business Day preceding the date of the applicable payment, and in the case of a prepayment, shall be no later than the prepayment date set by the Company, as well as the name or names (with address or addresses) in which the Common Units issuable upon such conversion shall be registered. Such Conversion Notice shall constitute a binding and irrevocable obligation of the holder of this Note to convert the Note to the extent set forth in the Conversion Notice. After any such Conversion Notice Dates, the Note may not be converted as to the portion of the Note being paid or prepaid (and that

has not been elected to be converted) by the Company in connection with such Conversion Notice Dates, unless the Company shall fail to pay all applicable principal and accrued interest with respect to such payment or prepayment. Any portion of the Note which is not paid or prepaid in connection with a particular Conversion Notice Date will continue to be convertible hereunder, until paid, after the respective Conversion Notice Dates, subject to all other terms and conditions of this Note with respect to such conversion.

(b) On or before the Conversion Date, the holder of this Note shall surrender this Note to the Company at its principal office. The Note surrendered for conversion shall be accompanied by proper assignment thereof to the Company or in blank. As promptly as practicable after the Conversion Date (but within ten (10) business days), the Company shall deliver to the holder of the Note being converted, cash, as provided in Section 4.11, in respect of any fraction of a Common Unit issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Conversion Date (subject to compliance with the foregoing provisions of this Section 4.13), and at such time the rights of the holder as a holder of a Note shall cease and the person or persons in whose name or names any Common Units shall be registered upon such conversion shall be deemed to have become the holder or holders of record of the Common Units represented thereby.

4.14. Reservation of Common Units. The Company shall at all times reserve and keep available out of its authorized but unissued Common Units, solely for the purpose of effecting the conversion of this Note, such number of its Common Units as shall from time to time be sufficient to effect the conversion of this Note, and if at any time the number of authorized but unissued Common Units shall not be sufficient to effect such conversion, the Company shall take such limited liability company action as may be necessary to increase its authorized but unissued Common Units to such number of Common Units as shall be sufficient for such purpose.

4.15. No Dilution or Impairment. The Company will not, by amendment of its Operating Agreement or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of the Note, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holders of Common Units issuable upon conversion of the Note.

5. Certain Defined Terms. As used in this Note, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Additional Common Units” shall have the meaning assigned to such term in Section 4.4.

“Applicable Conversion Value” shall have the meaning assigned to such term in Section 4.2.

“Business Day” means any day other than a Saturday, Sunday or public holiday or the equivalent for banks under the laws of The Commonwealth of Massachusetts.

“Collateral” shall have the meaning assigned to such term in Section 2.1(a).

“Company” shall have the meaning assigned to such term in the first paragraph of this Note.

“Conversion Date” shall have the meaning assigned to such term in Section 4.13.

“Conversion Notice” shall have the meaning assigned to such term in Section 4.13.

“Conversion Notice Date” shall have the meaning assigned to such term in Section 4.13.

“Events of Default” shall have the meaning assigned to such term in Section 3.1.

“holder” shall have the meaning assigned to such term in the first paragraph of this Note.

“Net Consideration Per Unit” shall have the meaning assigned to such term in Section 4.5.

“Outstanding Common Units” shall have the meaning assigned to such term in Section 4.3.

“Payment Date” or “Payment Dates” shall have the meanings assigned to such terms in Section 1.

“Person” means an individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

“PMSIs” shall have the meaning assigned to such term in Section 2.1(e).

“PSI Security Interest” shall have the meaning assigned to such term in Section 2.1(b).

“Senior Debt” shall have the meaning assigned to such term in Section 2.1(e).

“Senior Lender Debt” shall have the meaning assigned to such term in Section 2.2(h).

"Subsidiary" or "Subsidiaries" means any corporation or trust of which the Company and/or any of its other Subsidiaries (as herein defined) directly or indirectly owns at the time all of the outstanding shares of every class of such corporation or trust other than directors' qualifying shares.

6. Miscellaneous. (a) Upon surrender of this Note for transfer or exchange, a new Note or new Notes of the same tenor dated the date to which interest has been paid on the surrender Note and in an aggregate principal amount equal to the unpaid principal amount of the Note so surrendered will be issued to, and registered in the name of, the transferee or transferees. The Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes.

(b) In case any payment herein provided for shall not be paid when due, the Company promises to pay all cost of collection, including all reasonable attorney's fees.

(c) This Note shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to conflicts of laws principles, and shall have the effect of a sealed instrument.

(d) The Company hereby waives presentment, demand, notice of nonpayment, protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement of this Note.

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IN WITNESS WHEREOF, the Company has executed this Note as of the date first written above.

**FOLIOTRADE LLC**

By: 

Print Name: Steven MH Wallman

Title: CEO